

JAMIE LYNN GALLIAN  
16222 Monterey Lane Unit 376  
Huntington Beach, CA 92649  
(714)321-3449  
jamiegallian@gmail.com

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:		AMENDED
JAMIE LYNN GALLIAN	}	CASE NO. 8:21-bk-11710-SC
Debtor,		Adv. 8:21-ap-01096-SC
		Chapter 7
JANINE JASSO	}	DEFENDANTS' REQUEST FOR
Plaintiff,		EXTENSION OF TIME TO FILE
		NOTICE OF APPEAL.
vs.	}	
JAMIE LYNN GALLIAN		
Defendant		

---

**TO THE HONORABLE SCOTT C. CLARKSON, UNITES STATES  
BANKRUPTCY JUDGE, PLAINTIFF, JANINE JASSO, THE OFFICE OF THE**

1 UNITED STATES TRUSTEE, THE TRUSTEE AND HIS COUNSEL, AND ALL  
2 PARTIES IN INTEREST.

3 JAMIE LYNN GALLIAN hereby respectfully request extension of time to  
4  
5 file Notice of Appeal JOINTLY related to ECF 68, Motion To Dismiss hearing to  
6  
7 be held January 10, 2023, concerning Order entered December 21, 2022, 21:26:44  
8 PM regarding the following issues.

9 Page 77- “The Court has received and reviewed Defendant’s reply filed 1/6/23 [Dk. 96],  
10 ***and notes that it raises new arguments regarding FRBP 4007 that were not***  
11 ***raised in Defendant’s motion to dismiss in the first instance.*** Pursuant to LBR  
12 9013-1(g)(4), [n]ew arguments or matters raised for the first time in reply  
13 documents will not be considered. Moreover, Defendant admitted that the complaint  
14 was timely in her answer filed 12/17/21 [Dk. 18; paragraph 4].

15 Defendant’s Motion To Dismiss ECF 63 is attached for the Courts Convenience  
16 and Reference. Specifically, Debtor will raise at Oral Argument, draw the Court’s  
17 attention to Debtor’s Notice of Motion page ii, Line 10-12, giving notice of  
18 debtor’s objection to Complaint Doc -3 filed after the time to object to discharge  
19 under 4007, therefore was ineffective and late.

20 Additionally under MEMORANDUM OF POINTS & AUTHORITIES, again ECF  
21 63 is attached for the Courts Convenience and Reference.

22 Specifically, Debtor will raise at Oral Argument, draw the Court’s attention to  
23 Memorandum Of Points & Authorities, page iv, Line 16-27, giving notice of  
24 debtor’s objection to Complaint ECF 1, ECF 3, & ECF FAC 16 filed after the time  
25 to object to discharge under 4007, therefore was ineffective and late.

26 Debtor’s Reply to Plaintiff’s Response, ECF 96, thoroughly expounded on this  
27 Argument citing legal authority and case law, concerning the issue first raised in  
28 the Motion to Dismiss ECF 63; defects appearing on the face of each Complaint,  
ECF 1, ECF 3, and ECF 16 and in the Court’s Docket.

I declare under penalty of perjury the foregoing to be true and correct. Signed this  
9<sup>th</sup> day of January, 2023, at Huntington Beach, CA 92649

1 Dated: 1/09/23

*Jamie Lynn Gallian*  
JAMIE LYNN GALLIAN, Defendant

MEMORANDUM POINTS & AUTHORITIES

BACKGROUND

On July 9, 2021, Defendant initiated the underlying bankruptcy case by filing a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. In re JAMIE LYNN GALLIAN No. 8:21-bk-11710-SC, (ECF. 1).

On Schedule E/F to her bankruptcy petition Defendant listed Plaintiff as one of six creditor(s) in addition to The Huntington Beach Gables Homeowners Association all claiming some interest in the same (1) nonpriority unsecured claim of \$ 46,138.00. Debtor listed Plaintiff as follows: “Janine Jasso, c/o Huntington Beach Gables Homeowners Association No. 8:21-bk-11710-SC, ECF 1 at 26 (internal paginations, Schedule E/F at 3/11, creditor 4.6). On the same day, July 9, 2021, Defendant also filed a Verification of Master Mailing List of Creditors [LBR 1007-1(d)], certifying that the master mailing list of creditors filed in the bankruptcy case was complete, correct, and consistent with the Defendant's schedules. No. 8:21-bk-11710-SC, ECF 1 at 56. Debtor listed Plaintiff Janine Jasso P.O. Box 370161 El Paso, TX 79937.

On July 9, 2021, the court filed and entered an Official Form 309A, “Notice of Chapter 7 Bankruptcy Case — No Proof of Claim Deadline,” ECF. 7 which stated in bold “This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read all pages carefully.” No. 8:21-bk-11710-SC, ECF. 7 at 3/5.

The Official Form 309A, Notice of Chapter 7 Bankruptcy Case, also stated that “Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines

{00574074.DOCX; 1}

-4-

1 specified in this notice, (See line 9 for more information.)[.]” Id. Line 6 of Official  
2 Form 309A, Notice of Chapter 7 Bankruptcy Case, listed the address, operating  
3 hours and contact phone number for the Bankruptcy Court Clerk's office with an  
4 explanation that “Documents in this case may be filed at this address.” Id. at 4.  
5 Line 7 of the Official Form 309A, Notice of Chapter 7 Bankruptcy Case, under the  
6 heading “Meeting of Creditors,” stated the date of the meeting of creditors in bold:  
7 “August 18, 2021 at 9:00 a.m.” Id. Line 9 of the Official Form 309A, Notice of  
8 Chapter 7 Bankruptcy Case, under the heading “Deadlines,” stated in bold: “File  
9 by the deadline to object to discharge or to challenge whether certain debts are  
10 dischargeable: ... Filing deadline: 10/18/21.” Id.<sup>1</sup> Thus, the Official Form 309A,  
11 Notice of Chapter 7 Bankruptcy Case, stated that the 11 U.S.C. § 341(a) Meeting  
12 of Creditors was scheduled for August 18, 2021, and objections for discharge had  
13 to be filed no later than October 18, 2021. Id. (emphasis added).  
14

15  
16 On July 9, 2021, the court filed and entered the Master Mailing List of  
17 Creditors on the case docket, and included therein was: “Janine Jasso, c/o Gordon  
18 Rees Skully & Masukhani, 633 W. 5<sup>th</sup> Street, 52<sup>nd</sup> Floor, Los Angeles, CA 90071-  
19 2005; Janine Jasso P.O. Box 370161, TX 79937-0161 No. 8:21-bk-11710-SC, ECF  
20 7 (listing 36 total creditors).

21 On July 11, 2021, the Bankruptcy Noticing Center filed and entered its  
22 Certificate of Notice, ECF 7, attesting that the Official Form 309A, Notice of  
23 Chapter 7 Bankruptcy Case, ECF 15, was served on all creditors, including Janine  
24 Jasso. ECF 7 at 1.

25 According to the Certificate of Notice, the Bankruptcy Noticing Center served the  
26 Official Form 309A, Notice of Chapter 7 Bankruptcy Case, ECF 7, on “Janine  
27 Jasso, P.O. Box 370161, TX 79937-0161” and a second address  
28

{00574074.DOCX; 1}

1 “Janine Jasso c/o Gordon Rees Skully & Masukhani, 633 W. 5<sup>th</sup> Street, 52<sup>nd</sup> Floor,  
2 Los Angeles, CA 90071-2005 “ both by first class mail on July 11, 2021. Id.  
3

4 On October 18, 2021, Plaintiff filed her “Complaint for Determination of  
5 Dischargeability and Objecting to Debtor’s Discharge Pursuant to Sections 523  
6 And 727 of the Bankruptcy Code.” ECF 1 (the “Complaint”). The face of the  
7 Complaint indicated that Plaintiff was filing it as “Plaintiff, In Pro Per” Id. The  
8 Complaint was filed un-signed, without an original wet signature. Plaintiff dated  
9 the Complaint October 18, 2021. Id. at 14. The face of the complaint is stamped  
10 FILED, Clerk U.S. Bankruptcy Court Central District of California BY: (No  
11 initials were noted) by Deputy Clerk.  
12

13 A Proof of Service F 901303.1.PROOF.SERVICE was attached to the  
14 Complaint, Id 91. The Proof of Service contained the address of party over the age  
15 of 18 and not a party to this bankruptcy case or adversary proceeding as  
16 3250 Fairesta Street, La Crescenta, CA 90214.  
17

18 Section 2 of F 9013-3.1.Proof .Service, states: On (date) 10/18/2021, I  
19 served the following persons and/or entities at the last known address in this  
20 bankruptcy case or adversary proceeding by placing a true and correct copy thereof  
21 in a sealed envelope in the United States mail, first class, postage prepaid, and  
22 addressed as follows. Listing the judge here constitutes a declaration that mailing  
23 to the judge will be completed no later than 24 hours after the document is filed.  
24 Hon. Erithe A. Smith United States Bankruptcy Court Central District of California  
25 Ronald Reagan Federal Building 411 West Fourth Street, Suite 5040/Courtroom  
26 5A, Santa Ana, CA 92701-4593.  
27  
28

1 The debtor is not listed on the Proof of Service of Document. ECF 91. Request  
2 Judicial Notice. An Adversary Proceeding Cover Sheet is attached 1 of 2.  
3 However, the Cover Sheet is not signed nor dated by Plaintiff, and Page 2 of the  
4 Cover Sheet is not attached. Request Judicial Notice.

5 On October 19, 2021, Plaintiff filed an "Original signature page to  
6 Complaint and Adv. Cover Sheet"; (Attachments: # 1 Original Signature Page to  
7 Adv Cover Sheet. (Entered: 10/19/2021) ECF 3

8 The identical 10/18/2021 Proof of Service F 901303.1.PROOF.  
9 SERVICE was attached to the 10/19/2021 ECF 3, Complaint, Id 91. The Proof of  
10 Service contained the address of party over the age of 18 and not a party to this  
11 bankruptcy case or adversary proceeding as 3250 Fairesta Street, La Crescenta, CA  
12 90214.

13 Section 2 of F 9013-3.1.Proof.Service states: On (date) 10/18/2021, I served  
14 the following persons and/or entities at the last known address in this bankruptcy  
15 case or adversary proceeding by placing a true and correct copy thereof in a sealed  
16 envelope in the United States mail, first class, postage prepaid, and addressed as  
17 follows. Listing the judge here constitutes a declaration that mailing to the judge  
18 will be completed no later than 24 hours after the document is filed.

19 Hon. Erithe A. Smith United States Bankruptcy Court Central District of California  
20 Ronald Reagan Federal Building 411 West Fourth Street, Suite 5040/Courtroom  
21 5A, Santa Ana, CA 92701-4593.

22 Again, as noted above the debtor again is not listed on the Proof of Service  
23 of Document. ECF 3. An Adversary Proceeding Cover Sheet attached 1 of 2 filed  
24 10/19/2021, ECF 3-1.

1 The “Title Page” of Plaintiff’s Adversary Complaint, ECF 1 and ECF 3,  
2 indicate JANINE JASSO, an individual, Plaintiff v. JAMIE LYNN GALLIAN, an  
3 individual; and DOES 1 through 100, inclusive, Defendants.

4  
5 Plaintiff’s Adversary Complaint, ECF 1 and ECF 3, Title Page, indicate JANINE  
6 JASSO, an individual, Plaintiff v. JAMIE LYNN GALLIAN, an individual; and  
7 DOES 1 through 100, inclusive, Defendants.

8 The following list is as stated in ECF 1 and ECF 3:

9 Plaintiff First Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
10 1 Through 100)

11 Plaintiff Second Cause of Action.....(Against JAMIE LYNN GALLIAN and  
12 DOES 1 Through 100)

13 Plaintiff Third Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
14 1 Through 100)

15 Plaintiff Fourth Cause of Action.....(Against JAMIE LYNN GALLIAN and  
16 DOES 1 Through 100).

17 On October 26, 2021, Defendant’s Answer to Complaint. ECF 4.

18 On October 27, 2021, Defendant refiled her Answer to Complaint with  
19 Affirmative Defenses. ECF 5.

20 Debtor requests the Court take judicial notice of an Officer of the Court, Janine  
21 Jasso perjured statements on ECF 91, page 8, Line 6-7. “Debtor answered  
22 Plaintiff’s FAC on December 10, 2021. See DK 13” “Debtor could have made a  
23 timely motion to dismiss before she answered the complaint.” “Plaintiff has done  
24 months of discovery for this case based on Debtor’s bankruptcy schedules prior to  
25 the filing of the FAC and Debtor’s defenses listed in her DK 13 Answer, including

26 {00574074.DOCX; 1}

-8-

1 obtaining Debtor and the Defendant J-PAD, LLC (“JP LLC”) and Defendant J-  
2 SANDCASTLE CO LLC (“JSC LLC”) (collectively “Defendant LLCs”) bank,  
3 investment, and real property records from multiple government and private  
4 companies.”

5 Debtor just has one question for Plaintiff...Then why if you did “months of  
6 discovery for this case based on Debtor’s bankruptcy schedules prior to the filing  
7 of the FAC” does the FAC not contain one Cause of Action against J-Pad LLC or  
8 J-Sandcastle Co LLC????????????? And it has to be said, why would Plaintiff file  
9 1691 pages. All Debtor can say again is, “A complaint with the State Bar of  
10 California is forthcoming.”

11  
12 On November 16, 2021, Plaintiff filed her “First Amended Complaint For  
13 Determination of Dischargeability and Objecting to Debtor’s Discharge Pursuant  
14 to Sections 523 And 727 of the Bankruptcy Code.” ECF 6-1 (the “FAC  
15 Complaint”). The face of the Complaint indicated that Plaintiff was filing it as  
16 “Plaintiff . In Pro Per” Id.  
17  
18  
19  
20  
21

22 The “Title Page” Plaintiff’s First Amended Complaint, ECF 6, reads as  
23 JANINE JASSO, an individual, Plaintiff  
24

25 v.

26 JAMIE LYNN GALLIAN, an individual; J-PAD, LLC, a California Limited  
27 Liability Company, J-Sandcastle Co LLC, A California Limited Liability  
28 Company, and DOES 1 through 100, inclusive, Defendants.

{00574074.DOCX; 1}

-9-

Plaintiff's First Amended Complaint ECF 6:

Plaintiff First Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
1 Through 100)

Plaintiff Second Cause of Action.....(Against JAMIE LYNN GALLIAN and  
DOES 1 Through 100)

Plaintiff Third Cause of Action.....(Against JAMIE LYNN GALLIAN and  
DOES 1 Through 100)

Plaintiff Fourth Cause of Action.....(Against JAMIE LYNN GALLIAN and  
DOES 1 Through 100).

There are [NO] Causes of Action asserted against J-Pad, LLC or J-Sandcastle Co  
LLC in the Operative Complaint filed without Leave of Court. ECF 6

On September 20, 2022. Plaintiff filed Notice of Motion and Motion  
To Strike Answers Filed Defendants J-Pad, LLC, And J-Sandcastle Co LLC;  
Memorandum Of Points And Authorities In Support Thereof. ECF 40

On October 25, 2022, the Court held a hearing on Ms. Jasso's MOT to Strike  
the Answer(s) of J-Pad, LLC and J-Sandcastle Co LLC completed and filed by  
JAMIE LYNN GALLIAN, the Debtor

Debtor believed she was required to file an Answer. The Chapter 7 was  
filed on behalf of Jamie Lynn Gallian. Neither J-Pad, LLC nor J-Sandcastle Co  
LLC have filed for bankruptcy.

Debtor was unaware of the hearing of October 25, 2022, therefore was not in  
attendance. More interestingly Plaintiff, Janine Jasso, the Moving party did not  
appear at the hearing October 25, 2022. Ms. Jasso's Motion to Strike J-Pad LLC  
and J-Sandcastle Co LLC Answer(s) was noted by the Court as [Unopposed].

{00574074.DOCX; 1}

-10-

1 Debtor has never been absent during any Court hearing in debtor's Chapter 7, in  
2 the almost 20 months this Chapter 7 case has continued on. Debtor was in  
3 complete shock after reviewing the Courts Tentative Ruling Calendar October 25,  
4 2022, and realize she was absent.

5 On November 2, 2022, Order Granting (Janine Jasso) Plaintiff's Motion To  
6 Strike The Answers Of Defendant's J-Pad And J-Sandcastle Co LLC And Entry of  
7 Default. IT IS ORDERED: The Motion is Granted. The Answers Filed By  
8 Defendant J-Pad Are Stricken From The Record (Docket 16 And 17). The  
9 Answers Filed By Defendant J-Sandcastle Co LLC Are Stricken From The Record  
10 (Docket Nos. )14, 15, And 18.

12 In Accordance With These Orders, The Court Further Orders The Clerk To Enter  
13 The Default of Defendant, J-Pad, LLC And Enter The Default Of Defendant, J-  
14 Sandcastle Co. LLC. (BNC-PDF) Related Doc 40.

15 On the Debtor's mind this evening...Plaintiff asserted [NO] Causes of  
16 Action against J-Pad LLC and J-Sandcastle Co LLC in Plaintiff's First Amended  
17 Complaint ECF 6, filed without obtaining leave of court; and also an FAC that  
18 does not relate back to ECF 1 and/or ECF 3 and added new Defendants no less.  
19 However, on November 8, 2022, Defendant filed her "Motion for Dismissal of  
20 Adversarial Proceedings Filed by Plaintiff Janine Jasso against Debtor Jamie Lynn  
21 Gallian." ECF 63. According to the proof of service of the Motion, Robert  
22 McLelland, served a copy of the Motion upon Janine Jasso, Esq. by Email  
23 [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on November 8, 2022. ECF 64.

24 On November 9, 2022, Notice of Motion For: Motion To Dismiss Adversary  
25 Complaint: 1. Determine Dischargeability of Civil Attorney Fees Debt Separate  
26 and Aside Of Fees/Fine Pursuant To Section 523(A)(7); Argument Presented In  
27 {00574074.DOCX; 1}  
28

1 Concurrent MSJ For Dismissal Of 1<sup>st</sup> Cause Of Action Section 523(a)(7); 2. To  
2 Determine Nondischargeability Of Debt Pursuant To 11 U.S.C. Section  
3 523(a)(2)(A); 3. For Denial Of Discharge Pursuant To 11 U.S.C. 727(a)(3); 4.  
4 For Denial Of Discharge Pursuant To 11 U.S.C. 727(a)(4); 5. For Denial Of  
5 Discharge Pursuant To 11 U.S.C. 727(a)(5). According to the Proof of Service of  
6 the Motion, Robert McLelland, served a copy of the Motion upon Janine Jasso,  
7 Esq. by Email [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on November 9, 2022. ECF 68.

9 On December 2, 2022, the Court on its own Motion, Order Continuing  
10 Hearing On Motion To Dismiss. IT IS ORDERED. The Hearing On Debtor's  
11 Motion To Dismiss Complaint filed November 8, 2022, (Docket 63) Is Hereby  
12 CONTINUED TO JANUARY 10, 2023, AT 1:30 P.M. In Courtroom 5C. Any  
13 Response Is Due 14 Days Prior To The Hearing. Replies are Due 7 Days Prior To  
14 The Hearing. (BNC-PDF). Signed on 12/2/2022. On December 4, 2022,  
15 Defendant received by email at jamiegallian@gmail.com, BNC Certificate of  
16 Notice – PDF Document. (RE: related document(s) 79 Order. Immediately after  
17 becoming aware of the BNC Certificate of Notice, Ms. Gallian decided to error on  
18 the side of caution because of uncertainty of not knowing whether it was Debtor's  
19 responsibility to give Notice of the Continued Hearing on her Motion to Dismiss  
20 ECF 63, attached the BNC Order ECF 79, to Notice Of Motion For: (1) Motion To  
21 Dismiss Adversary Complaint (Doc 63), Filed 11/8/2022 (2) Order Filed &  
22 Entered Dec. 2, 2022 Continuing Hearing On Motion To Dismiss Is Attached for  
23 The Convenience Of The Court And The Parties. According to the Proof of  
24 Service of the Motion, Robert McLelland, served a copy upon Janine Jasso, Esq.  
25 by Email [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on December 4, 2022. ECF 82, 83.

1 Plaintiff was Ordered on December 2, 2022, through the BNC Certificate of  
2 Notice-PDF ECF 80, stating “Any Response is Due 14 days Prior To The Hearing”,  
3 (which was December 27, 2022), and was the deadline for Plaintiff to file and  
4 serve any written opposition to the Motion pursuant to Local Bankruptcy Rule  
5 9013-1(f)(1). Debtor’s Reply is due 7 days prior to the hearing.  
6

7 As reflected on the case docket for this adversary proceeding, Plaintiff did  
8 not file a written opposition to the Motion by this date. Debtor has not had the  
9 appropriate time to respond to a myriad of excuses Plaintiff presents belied by the  
10 fact Plaintiff filed 5 Documents, (ECF 89, ECF 90, ECF 91, ECF 94, ECF 95  
11 consisting of 1,691 pages.

12 Plaintiff self-reported and admitted in her Response ECF 91, page 4, Line  
13 19-20, to having knowledge of Debtor’s Motion to Dismiss in early December and  
14 admitted to receiving BNC Certificate of Notice – PDF (mailed to the address in  
15 the Master Listing, 7/11/2021, BNC Certificate of Notice, ECF 7, Plaintiff’s P.O.  
16 Box).  
17

18 “I received something from the court [sic] in December, which did not  
19 include any pleadings attached, regarding the Court calendaring Debtor’s  
20 motion.....” ECF 91 page 4 at Line 19-20,

21 Additionally, on December 4, 2022, Debtor prepared a corrected Notice of  
22 Hearing with the new date 1/10/23. Mr. Robert McLelland electronically served  
23 Plaintiff, Janine Jasso [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on December 5, 2022. ECF 82  
24

25  
26 Federal Rule of Bankruptcy Procedure 4007(c) provides that a complaint to  
27 determine dischargeability of debt under 11 U.S.C. § 523(a) “shall be filed no later  
28 than 60 days after the first date set for the meeting of creditors under [11 U.S.C.] §

1 341(a) ... On motion of a party in interest, after hearing on notice, the court may for  
2 cause extend the time fixed under this subdivision. The motion shall be filed before  
3 the time has expired.” Since the first date set for the meeting of creditors under 11  
4 U.S.C. § 341(a) as stated in the Official Form 309A, Notice of Chapter 7  
5 Bankruptcy Case, was August 18, 2021, and the Official Form 309A, Notice of  
6 Chapter 7 Bankruptcy Case was served on all creditors, including Plaintiff, the 60-  
7 day deadline to challenge whether certain debts are dischargeable was October 18,  
8 2022. ECF 7 See, Federal Rule of Bankruptcy Procedure 4007(c). This filing  
9 deadline, October 18, 2021, was also expressly stated in the Official Form 309A,  
10 Notice of Chapter 7 Bankruptcy Case. ECF 7. Plaintiff did not file the Complaint  
11 until October 19, 2021, which was after the deadline without an extension.  
12 “[W]hen a creditor seeks to extend the 60-day window to file a nondischargeability  
13 complaint, the creditor must file a motion before the deadline passes and show  
14 cause why the extension is necessary.” Willms v. Sanderson, 723 F.3d 1094, 1100  
15 (9th Cir. 2013) (citing Federal Rule of Bankruptcy Procedure 9006(b)(3) and  
16 noting that the deadline for filing a nondischargeability complaint may be extended  
17 only to the extent and under the conditions stated in Federal Rule of Bankruptcy  
18 Procedure 4007(c)). The Federal Rules of Bankruptcy Procedure “afford [a  
19 bankruptcy court] no discretion to extend retroactively the deadline set in [Federal  
20 Rule of Bankruptcy Procedure] 4007(c) for filing nondischargeability complaints.”  
21 Anwar v. Johnson, 720 F.3d 1183, 1185-1186 (9th Cir. 2013) (an attorney's  
22 computer problems did not excuse his late filing of two dischargeability complaints  
23 by 26 and 38 minutes).  
24 Therefore, under the Federal Rules of Bankruptcy Procedure, Plaintiff was  
25 required to either file a nondischargeability complaint or a motion to extend the  
26 {00574074.DOCX; 1}

1 deadline to file such a complaint, for cause, within 60 days of the 11 U.S.C. §  
2 341(a) meeting of creditors, i.e. by October 18, 2021. Plaintiff did not file the  
3 Complaint or a motion to extend the deadline by October 18, 2021, and therefore,  
4 the Complaint is time-barred.

5 In *Willms v. Sanderson*, the Ninth Circuit stated that “Ninth Circuit law strictly  
6 construes Rule 4007(c) and courts cannot extend its time limit implicitly where no  
7 such motion is made.” 723 F.3d at 1100 (alterations and citations omitted). The  
8 strict application of Rule 4007(c) is “necessary due to the need for certainty in  
9 determining which claims are and are not discharged.” *Id.* (citation omitted). The  
10 Ninth Circuit has “repeatedly held that the sixty-day time limit for filing  
11 nondischargeability complaints under [§ 523(a)] is strict and, without qualification,  
12 cannot be extended unless a motion is made before the 60-day limit expires.”  
13 Anwar v. Johnson, 720 F.3d at 1187 (citations and internal quotation marks  
14 omitted).

15  
16 The evidentiary record described herein indicates that Plaintiff was aware of the  
17 deadline to file a complaint to determine dischargeability of debt that Defendant  
18 owes to him because: (1) the Official Form 309A, Notice of Chapter 7 Bankruptcy  
19 Case notified creditors of the filing deadline and was served on Plaintiff on July  
20 11, 2021 as indicated by the Bankruptcy Noticing Center certificate of notice, ECF  
21 7, which gave him notice of the deadline of over 90 days, more than the minimum  
22 30 day notice required by Federal Rule of Bankruptcy Procedure 4007(c); (2)  
23 Plaintiff was preparing to file the Complaint on the last day of the filing period  
24 under Federal Rule of Bankruptcy Procedure 4007(c) on October 18, 2021,  
25 however Plaintiff did not sign the complaint with a wet signature; (3) If Plaintiff  
26 lives in El Paso Texas as self-reported to this Court, did Ms. Jasso, sign the  
27  
28

1 Complaint and file the Complaint on October 19, 2021 in the Clerk's Office; (4) In  
2 Ms. Jasso's attempt to file the Complaint on time on October 18, 2021, the  
3 Complaint was filed at the Clerk window without a wet signature was ineffective;  
4 and (5) Ms. Jasso's last attempt to file the Complaint on October 19, 2021 was  
5 effective, but beyond the sixty-day filing deadline.

6 None of these facts can be disputed by Plaintiff.

7  
8 Ms. Jasso's attempt to file the Complaint with the Bankruptcy Clerk window on  
9 time was ineffective because an unsigned complaint without a wet signature is not  
10 a proper filing a complaint. Under Federal Rule of Bankruptcy Procedure 5005(a),  
11 complaints and other papers required to be filed under the Federal Rules of  
12 Bankruptcy Procedure "shall be filed with the clerk in the district where the case  
13 under the [Bankruptcy] Code is pending." Because Defendant's bankruptcy case  
14 was pending in the Central District of California, Plaintiff was required to file the  
15 Complaint with the Clerk of the Bankruptcy Court in the Central District of  
16 California. The Local Bankruptcy Rules for the Central District of California  
17 mandate the electronic filing with the Clerk of "all documents submitted in any  
18 case or proceeding," on the Bankruptcy Court's Case Management/Electronic Case  
19 Filing ("CM/ECF") System unless the filing includes confidential court records or  
20 the filing party is a pro se litigant [or] an "attorney who files documents in fewer  
21 than 5 bankruptcy cases or adversary proceedings in a single calendar year[.]"

22  
23 Local Bankruptcy Rule 5005-4 and Section 3.1 of the Court Manual for the  
24 United States Bankruptcy Court, Central District of California (the "Court  
25 Manual"). As stated in the Court Manual, "Case Management/Electronic Case  
26 Filing (CM/ECF) is a case management system that allows [attorneys] to  
27 electronically file petitions and other documents via the internet." Court Manual, §  
28

1 3.1(a). Generally, [only] attorneys admitted to practice in the Central District of  
2 California, currently in good standing, are eligible to use the CM/ECF system and  
3 file documents with the Bankruptcy Court electronically, and the attorneys must be  
4 registered with CM/ECF, must have completed online training on the CM/ECF  
5 system and prove competence on the system to use it and file documents with the  
6 court electronically. Court Manual, § 3.2(a), (b) and (c).  
7

8  
9 In this case, Plaintiff, a California Licensed Attorney in good standing,  
10 eligible to file documents with the Bankruptcy Court electronically on the court's  
11 CM/ECF system, although not required to file her Complaint electronically, as Ms.  
12 Jasso filed the Adversary Complaint “in pro se”. However, since the inception of  
13 Debtor’s Chapter 7 case, the only address ever provided [by] Ms. Janine Jasso is a  
14 P.O. Box in El Paso, Texas. All complaints and pleadings in this Chapter 7 filed  
15 by Plaintiff, Janine Jasso, Esq. list a P.O. Box 370161 El Paso, TX 79937.  
16

17 Pursuant to Local Bankruptcy Rule 1071-1(c), “Documents filed non-  
18 electronically, other than a petition, must be filed only in the divisional office of  
19 the clerk to which the relevant case or proceeding has been assigned.

20 However, the clerk may, by special waiver or upon the order of the court,  
21 accept documents in any office of the clerk irrespective of division.” Further, a  
22 “document delivered for filing to the clerk will be accepted if accompanied by any  
23 required fee and signature[...].” Local Bankruptcy Rule 5005-1.  
24

25  
26 Section 3.11 of the Court Manual is nearly identical to Local Bankruptcy  
27 Rule 5005-4 and repeats the exceptions to mandatory electronic filing. Court  
28 Manual, § 3.11 at 3-18 and 3-19. Moreover, the Court Manual states that if, for

1 example, the court is unable to accept electronic filings for any reason, “the option  
2 of filing documents manually at the filing window always remains available and  
3 should be utilized whenever it is essential that a particular document be filed by a  
4 particular date.” Id., § 3.12 at 3-19. For pro se litigants, after application and  
5 approval, the court provides an Electronic Drop Box (“EBD”).  
6

7 The court's local rules and the Court Manual thus provide that the filing of a  
8 complaint or other document with the Clerk of the Bankruptcy Court is to be done  
9 electronically if the filer is required to file electronically, and if the filer [is not]  
10 required to file electronically, the filer is to file the complaint or other document  
11 manually at the filing window of the Clerk's Office.

12 Accordingly, Ms. Jasso’s Unsigned Complaint ECF 1, presented without a  
13 wet signature, was unauthorized and ineffective, and her second filing of the  
14 Complaint at the filing window, (ECF. 3) on October 19, 2021 which was  
15 purportedly executed with Ms. Janine Jasso’s wet signature and effective, was late.  
16

17  
18 The time limit of Federal Rule of Bankruptcy Procedure 4007(c) is strictly  
19 enforced and cannot be extended once the deadline has passed, which happened  
20 here as the Complaint was filed late, without any request for extension of time filed  
21 before the deadline.  
22

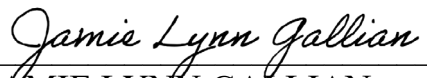
## 23 CONCLUSION

24  
25 Plaintiff’s Complaint was not filed within the time period required  
26 under Federal Rule of Bankruptcy Procedure 4007(c) and is therefore time-barred.  
27  
28

1 Defendant's respectfully request the Motion To Dismiss the Complaint and  
2 the Adversary Proceeding be granted and the Complaint and the adversary  
3 proceeding be dismissed with prejudice. Anwar v. Johnson, 720 F.3d at 1189  
4 (affirming the bankruptcy court's dismissal of the dischargeability complaint with  
5 prejudice for filing the complaint late under Federal Rule of Bankruptcy Procedure  
6 4007(c)).  
7

8  
9  
10 Dated: 1/9/2023

Respectfully submitted,

11  
12   
13 JAMIE LYNN GALLIAN  
14 Defendant, IN PRO PER

15 FOOTNOTES

16 [1] The form also notes that “You must file a complaint: ... if you want to have a  
17 debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).” Id.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JAMIE LYNN GALLIAN  
16222 Monterey Ln. #376  
Huntington Beach, CA 92649  
Telephone (714) 321-3449  
jamiegallian@gmail.com

Debtor, Defendant, IN PRO PER

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

Case No. 8:21-BK-11710-SC

Adv. 8:21-ap-01096-SC

In re

JAMIE LYNN GALLIAN

Debtor

JANINE JASSO, ESQ.  
an individual

Plaintiff

vs.

JAMIE LYNN GALLIAN

Defendant

Before the *Honorable Scott C. Clarkson*  
**NOTICE OF AND MOTION TO DISMISS  
COMPLAINT:**

- 1. TO DETERMINE DISCHARGEABILITY OF CIVIL ATTORNEY FEES DEBT SEPARATE AND ASIDE OF FEES/FINE PURSUANT TO §523(A)(7);**
- ARGUMENT PRESENTED IN concurrent MSJ FOR DISMISSAL OF 1ST CAUSE OF ACTION §523(a)(7)**
- 2. TO DETERMINE NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. SECTION 523(a)(2)(A);**
- 3. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. SECTION 727(a)(3);**
- 4. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. SECTION 727(a)(4);**
- 5. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. SECTION 727(a)(5).**

[F.R.C.P. §§9(b), 12(b)(6); F.R.B.P. §§7009, 7012

Date: 11-15-2022

Time: 1:30pm

Courtroom 5C ZoomGov

Location: 411 W. Fourth Street, Santa Ana, CA 92701

**TO PLAINTIFF JANINE JASSO, ESQ :**

**PLEASE TAKE NOTICE** that on 11-15-2022 at 1:30 PM in the Courtroom of the

Honorable Scott C. Clarkson, United States Bankruptcy Judge, Courtroom 5C located at the

United States Bankruptcy Court, Central District of California, Ronald Reagan Federal Building and Courthouse, located at 411 West Fourth Street, Suite 5060, Santa Ana, CA 92701-4593, Debtor and Defendant **JAMIE LYNN GALLIAN** (“Defendant”) moves for an order dismissing the *Adversary Complaint*:

1. *To Determine Nondischargeability of Debt Pursuant to 11 U.S.C. Section §523(a)(7);*
2. *To Determine Nondischargeability of Debt Pursuant to 11 U.S.C. Section §523(a)(2)(A);*
3. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(3);*
4. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(4)*
5. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(5);*

(“Original Complaint”) filed 10-18-2021 Doc-1 [unsigned] herein by Plaintiff JANINE JASSO, ESQ. (“Plaintiff”). A second complaint was filed 10-19-2021, Doc-3; a FAC was filed 11-16-2021, Doc-6, was without leave of court. The FAC added new causes of action and facts unrelated to the “original [unsigned] complaint” Doc-1. Doc -3 was filed after the time to object to discharge 4007.

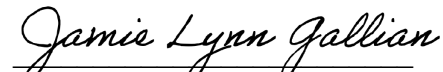
The *Motion to Dismiss* will be based on this Notice, on the attached Memorandum of Points and Authorities, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the *Motion*.

Defendant brings this *Motion to Dismiss* pursuant to F.R.C.P. §§9(b), 12(b)(6), and F.R.B.P. § 7009, 7012, on the grounds that Plaintiff has failed to state a claim upon which relief may be granted. Plaintiff’s Complaint fails to meet even the minimal elements of 11 U.S.C. §523(a)(2) and § 727(a). Plaintiff attempts to allege causes of action by providing an excessive listing of vague, redundant, and ultimately confusing assertions of fact (many of which only marginally qualify as facts), then, failing to apply those assertions to the elements of any given cause of action, makes only sweeping conclusory declarations of Defendant’s liability. As a result, the pleading defies a basis for drawing any reasonable inference that Defendant is responsible for the misconduct alleged, let alone any of the injuries or damages which Plaintiff claims to have suffered. It is not the responsibility of Defendant, and certainly not the responsibility of the Court, to decipher the relevant facts from the referenced narrative in order to construct Plaintiff’s claims for relief.

1 Pursuant to Local Bankruptcy Rule 9013-1, any objection or response to this Motion must  
2 be stated in writing, filed with the Clerk of the Court and served on Defendant at the  
3 address located in the upper left hand corner no later than fourteen days prior to the  
4 hearing. Failure to so state, file and serve any opposition may result in the Court failing to cons  
5 ider the same.

6  
7  
8 DATED: November 7, 2022

Respectfully submitted,

9  
10   
11 JAMIE LYNN GALLIAN  
12 Debtor and Defendant,  
13 In Pro Per  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

MEMORANDUM OF POINTS & AUTHORITIES ..... -1-

BACKGROUND ..... -1-

ARGUMENT ..... -3-

PLAINTIFF’S COMPLAINT IS PROPERLY DISMISSED PURSUANT TO F.R.C.P.  
§§ 9(B), 12(B)(6) AND F.R.B.P. §§7009, 7012 .....  
PLAINTIFF’S 1ST CAUSE OF ACTION UNDER § 523.7(a)(7) IS  
PROPERLY DISMISSED . . . . .

PLAINTIFF’S 2nd CAUSE OF ACTION FOR FRAUD UNDER 11 U.S.C.  
§ 523(a)(2)(A) IS PROPERLY DISMISSED ..... -4-

PLAINTIFF’S 3<sup>rd</sup> CAUSE OF ACTION UNDER 11 U.S.C. §727(a)(3) IS  
PROPERLY DISMISSED ..... -9-

PLAINTIFF’S 4<sup>TH</sup> CAUSE OF ACTION UNDER 11 U.S.C. §727(a)(4) IS  
PROPERLY DISMISSED ..... -12-

PLAINTIFF’S 5<sup>TH</sup> CAUSE OF ACTION UNDER 11 U.S.C. §727(a)(5) IS  
PROPERLY DISMISSED ..... -13-

CONCLUSION ..... -13-

## TABLE OF AUTHORITIES

### CASES

<i>Accord Keeney v. Smith (In re Keeney)</i> , 227 F.3d 679, 685 (6th Cir. 2000) . . . . .	-10-
<i>AHCOM, Ltd. v. Smeding</i> , 2010 WL 4117736, 2010 DJDAR 16125, Case No. 09-16020 (9th Cir. Oct. 21, 2010) . . . . .	-13-
<i>Ashcroft v. Iqbal</i> , 129 S.Ct. 1937, 1949 (2009) . . . . .	-3-
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009), quoting, <i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007) . . . . .	-3-
<i>Associated Gen. Contractors of Calif. v. California State Council of Carpenters</i> 459 U.S. 519, 526 (1983) . . . . .	-4-
<i>Aulson v. Blanchard</i> 83 F.3d 1, 3 (1st Cir. 1996) . . . . .	-4-
<i>Balistreri v. Pacifica Police Dept</i> , 901 F.2d 696, 699 (9th Cir. 1990) . . . . .	-4-
<i>Bauman v. Post (In re Post)</i> , 347 B.R. 104, 112 (Bankr. M.D. Fla. 2006) . . . . .	-10-
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007) . . . . .	-3-
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007) . . . . .	-3-
<i>Conley v Gibson</i> , 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957) . . . . .	-4-
<i>De La Cruz v Tormey</i> 582 F.2d 45, 48 (9th Cir. 1978) . . . . .	-4-
<i>Devaney v. Chester</i> , 813 F.2d 566, 568 (2d Cir. 1987) . . . . .	-5-
<i>Estate of Harris v. Dawley (In re Dawley)</i> , 312 B.R. 765, 785 (Bankr. E.D. Pa. 2004) . . . . .	-10-
<i>Graehling v. Village of Lombard, III</i> , 58 F.3d 295, 297 (7th Cir. 1995) . . . . .	-4-
<i>Gullickson v. Brown (In re Brown)</i> , 108 F.3d 1290, 1294-95 (10th Cir. 1997) . . . . .	-10-
<i>In re Actrade Financial Technologies Ltd.</i> , 337 B.R. 791, 801 (Bankr. S.D.N.Y. 2005) . . . . .	-5-
<i>In re Beaubouef</i> , 966 F.2d 174, 178 (5th Cir. 1992) . . . . .	-10-
<i>In re BFP</i> , 974 F.2d 1144 (9th Cir.1992) . . . . .	-7-
<i>In re Cohen</i> , 300 F.3d 1097 (9th Cir. 2002) . . . . .	-7-
<i>In re Commercial W. Fin. Corp.</i> , 761 F.2d 1329, 1331 n.2 (9th Cir. 1985) . . . . .	-7-
<i>In re Dawley</i> , 312 B.R. at 787 . . . . .	-10-
<i>In re Fravel</i> , 143 Bankr. 1001 (Bankr. E.D.Va.1992) . . . . .	-5-
<i>In re Garcia</i> , 168 B.R. 403 (D. Ariz. 1994) . . . . .	-8-

1	<i>In re Jacobs</i> , 403 B.R. 565, 574 (Bankr. N.D. Ill. 2009) . . . . .	-5-
2	<i>In re Kanaley</i> , 241 B.R. 795, 803 (Bankr. S.D.N.Y. 1991) . . . . .	-5-
3	<i>In re Lawson</i> , 122 F3d 1237 (CA9 1997). . . . .	-8-
4	<i>In re Rubin</i> , 875 F.2d 755, 759 (9 <sup>th</sup> Cir., 1989) . . . . .	-4-
5	<i>In re Schwartz &amp; Meyers</i> , 130 Bankr. 416 (Bankr. S.D.N.Y.1991) . . . . .	-5-
6	<i>In re Sharp Int'l Corp.</i> , 403 F.3d 43, 56 (2d Cir. 2004) . . . . .	-5-
7	<i>In re Topper</i> , 229 F.2d 691, 693 (3d Cir. 1956) cited in <i>In re Georges</i> , 138 Fed. Appx. 471, 472 (3d Cir. 2005) . . . . .	-10-
8	<i>In re Zimmerman</i> , 320 B.R. at 806 . . . . .	-10-
9	<i>Matter of Beaubouef</i> , 966 F.2d 174, 178 (5th Cir 1992), cited in <i>In re Spitko</i> , 357 B.R. at 312	
10	. . . . .	-10-
11	<i>Moore v. Strickland (In re Strickland)</i> , 350 B.R. 158, 163 (Bankr. D. Del. 2006). . . . .	-10-
12	<i>N.L. Industries, Inc. v. Kaplan</i> , 792 F.2d 896, 898 (9th Cir. 1986) . . . . .	-3-
13	<i>Neilson v. Chang</i> , 253 F.3d 520 (9th Cir. 2001). . . . .	-7-
14	<i>Parnes et al. v. Parnes(In re Parnes)</i> , 200 B.R. 710, 715(Bankr. N.D. Ga. 1996) . . . . .	-12-
15	<i>Polich v. Burlington Northern, Inc.</i> , 942 F.2d 1467, 1472 (9th Cir. 1991) . . . . .	-3-
16	<i>Schafer v. Las Vegas Hilton Corp. (In re Video Depot)</i> , 127 F.3d 1195, 1197-98 (9th Cir. 1997	
17	. . . . .	-7-
18	<i>Swicegood</i> , 924 F.2d at 232 . . . . .	-10-
19	<i>Western Mining Council v. Watt</i> , 643 F.2d 618, 624 (9th Cir. 1981), <i>cert. denied</i> , 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed. 2d 474 (1981) . . . . .	-4-
20		
21	<b>STATUTES</b>	
22	11 U.S.C. §727(a)(2)(A) . . . . .	-7-
23	11 U.S.C. §727(a)(4)(A) . . . . .	-9-
24	11 U.S.C. § 544. . . . .	-7-
25	11 U.S.C. § 544. . . . .	-7-
26	11 U.S.C. § 548. . . . .	-1-, -7-
27	11 U.S.C. § 548. . . . .	-7-
28		

1	11 U.S.C. § 727(a)(5) . . . . .	-12-
2	11 U.S.C. §523(a)(2)(A) . . . . .	-5-
3	11 U.S.C. §523(a)(6) . . . . .	-5-
4	Fed. R. Civ. P. 9(b) . . . . .	-5-
5	Federal Rule of Bankruptcy Procedure 7009 . . . . .	-1-
6	Federal Rule of Bankruptcy Procedure 7009 . . . . .	-5-, -6-
7	Federal Rule of Bankruptcy Procedure 7012 . . . . .	-4-
8	Federal Rule of Bankruptcy Procedure 7012 . . . . .	-4-
9	Federal Rule of Civil Procedure 12(b)(6) . . . . .	-4-
10	Federal Rule of Civil Procedure Rule 9(b) . . . . .	-5-, -6-
11	Federal Rules of Civil Procedure, rule 12(b)(6) . . . . .	-3-
12	Section 548(a)(2) . . . . .	-7-

13 **1. MEMORANDUM OF POINTS & AUTHORITIES**

14 **a. BACKGROUND**

15 On 07/09/2021, the Debtor commenced this voluntary Chapter 7 bankruptcy.

16 On 10/18/2021, Plaintiff commenced this Adversary Complaint. 8:21-ap-01096, filing an  
17 [unsigned] Complaint with the Clerk of the Court. Doc-1.

18 On 10/19/2021, Plaintiff filed a second complaint after 4:00pm, with the Clerk of the  
19 court. Plaintiff failed to serve debtor, in pro per, with the second 10-19-2021 "signed copy" of the  
20 complaint. Doc 3

21 On November 16, 2021 Plaintiff filed a First Amended Adversary Complaint, ("FAC")  
22 added and expanding causes of actions and adding facts, not relating back to the original  
23 [unsigned] complaint filed 10-18-2021. Doc-1, subsequently re-filed on October 19, 2021. Doc-3  
24 Plaintiff, a licensed California Attorney, failed to file a Notice of and Motion to \Amend  
25 Adversary Complaint Doc-3 and obtain leave of court and/or the courts permission to file a late  
26 adversary complaint broadening the causes of actions not relating or appearing in the original  
27 unsigned complaint Doc-1. Moreover, Plaintiff, Janine B. Jasso, Esq. is a Member of the  
28 California State Bar, SBN 170188 and has come into this court with unclean hands, mislead the  
court on several points of fact in the original complaint and the First Amended Complaint.

1 The Third Cause of Action is for Denial of Defendants' Discharge Pursuant to 11 U.S.C. §727(a)  
2 (3); The Fourth Cause of Action is for Denial of Defendants' Discharge for False Oath Pursuant to  
3 11 U.S.C. §727(a)(4)(A); The Fifth Cause of Action is for Denial of Defendants' Discharge for  
4 Failure to Explain Losses Under 11 U.S.C. §727(a)(5).

5  
6 Plaintiff's Second Cause based in part on Unit 376, Tract 10542 Unit 4, defendant a  
7 bona fide purchaser 11-1-18, Compl ¶ 26 for value of a 2014 Skyline Custom Villa  
8 manufactured home under an unexpired 80 yr Ground Leasehold Assignment from seller  
9 Lisa Ryan, of approximately 35 years remaining on the unexpired ground lease, pursuant to  
10 Health & Safety Code §18551. Seller Lisa Ryan, obtained the use of Lot 376 in 2006.  
11 The Ground Space, Lot 376, under the 2014 Skyline Custom Villa installed by permit from  
12 the Department of Housing and Community Development in 9-2014, purchased by defendant  
13 11-1-2018, based upon on an allegation, Compl ¶52, FAC ¶84 that Defendant engaged in an  
14 fraudulent scheme to place her most substantial asset, the condominium Unit 53 located  
15 at 4476 Alderport, also in Tract 10542, out of reach of Plaintiff, who, as an individual  
16 Board member, was in the process of obtaining an attorney's fees award in excess of  
17 \$40,000.00, for successfully defending Debtor's civil cross-claims. Plaintiff, alleges debtor  
18 conducted her personal affairs through her personal account and business bank  
19 account held under the name of J-Sandcastle Co LLC, her sole member, alter ego  
20 company, J-Sandcastle Co, LLC., (the "Alter Ego Company") in an effort to shield herself  
21 from collection from judgments that that were not even entered until 2019. Plaintiff, a Board  
22 Member and former attorney for The Huntington Beach Gables Homeowners  
23 Association, whom obtained a \$3,070.00 judgment against Debtor on September  
24 27, 2018, and none against J-Sandcastle Co LLC or J-Pad, LLC. (FAC ¶ 45).  
25 This claim is properly dismissed as Plaintiff is not the Chapter 7 Trustee and therefore  
26 lacks the standing to raise a claim under 11 U.S.C. § 548.

27 While the Plaintiff claims: "Plaintiff was in the process of obtaining an attorney  
28 fees award from defending against a cross claim" the basic elements of 11 U.S.C.  
§523(a)(2)(A) are nowhere to be found in the Complaint, violating the  
requirements of Federal Rule of Civil Procedure 9(b), made applicable to  
bankruptcy by Federal Rule of Bankruptcy Procedure 7009. The Complaint  
does not identify: (1) a representation of fact by the debtor, (2) that was material, (3)  
that the debtor knew at the time to be false, (4) that the debtor made with the  
intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the  
creditor's reliance was reasonable, and (7) that damage proximately resulted from the  
misrepresentation.

Plaintiff's Second Cause of Action is for Denial of Defendants' Discharge Pursuant to 11

1 U.S.C. §727(a)(2)(A) ) is based on an allegation that: "Defendant engaged in an ongoing  
2 scheme to avoid, delay, hinder and defraud Plaintiff and her creditors, who had obtained  
3 judgments against her by concealing and transferring property, that was rightfully hers, to her  
4 Alter Ego Companies to prevent her creditors from collecting on their debts. (Complaint ¶ 42).  
5 The Complaint is silent as to what specific assets were transferred to Alter Ego Companies -  
6 and the dates of said alleged transfers - to prevent her creditors from collecting on a judgment of  
7 \$319,000.00 that didn't enter until May 2019. Ironically, of the few assets that Plaintiff does  
8 define as having been sold (ie., transferred), they occurred **beyond** the one-year pre-filing period.

9 Plaintiff's Third Cause of Action is for Denial of Defendants' Discharge for False Oath  
10 Pursuant to 11 U.S.C. §727(a)(3) is based on an allegation that the Defendant omitted assets in her  
11 bankruptcy, and failed to disclose said assets in her 341(a) examination - yet the  
12 Complaint acknowledged that the Debtor amended her bankruptcy schedules at least nine  
13 times, correcting and remedying what she inadvertently omitted beforehand. The Complaint  
14 cites no facts that this was more than an innocent and inadvertent oversight, and no facts were  
15 cited in the Complaint that this was a knowingly and fraudulently made false oath.

16 Plaintiff's Fourth Cause of Action is for Denial of Defendants' Discharge for Failure to  
17 Explain Losses Under 11 U.S.C. §727(a)(5) is based on an allegation that the Defendant failed to  
18 explain any loss of assets or deficiency of assets to meet the debtor's liabilities - yet the Complaint  
19 acknowledged that the Debtor amended her bankruptcy schedules nine times, correcting,  
20 explaining, and remedying what she inadvertently omitted beforehand. The Complaint cites no  
21 facts of any asset that remains unaccounted for - since the amendments, all were accounted  
22 for and explained. And since at this point in time, it is still "before the determination of a denial of  
23 discharge" Defendant has successfully explained all of her previous errors by virtue of her nine  
24 amendments filed solely In Pro Per.

25 Plaintiff's Fifth Cause of Action is for Alter Ego - which is not a valid cause of action  
26 under 11 U.S.C. §523(a) and/or 11 U.S.C. §727(a). It's not even a valid cause of action under  
27 California law.

28 Accordingly, the task has fallen upon Defendant to bring the instant *Motion to Dismiss*, for

1 failure to state a claim upon which relief can be granted pursuant to Rule 7012 of the  
2 Federal Rules of Bankruptcy Procedure, incorporating by reference, Rule 12(b)(6) of the  
3 Federal Rules of Civil Procedure in order to demonstrate that Plaintiff's pleading is filled  
4 with superfluous matter, alleging vague unspecified conduct, damages, and events which are so  
5 remote in time as to be time-barred and allegations which are mere conclusions.

6 b. **ARGUMENT**

7 A complaint must allege sufficient factual matter, which if accepted as true would "state a  
8 claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949  
9 (2009), quoting, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially  
10 plausible when a court can draw a reasonable inference that the defendant is liable for misconduct.  
11 *Id.* The complaint must state a claim for relief that is plausible in order to survive a motion to  
12 dismiss. *Ashcroft v. Iqbal*, 129 S. Ct. at 1950. A dismissal without leave to amend should not be  
13 granted unless "the complaint could not be saved by any amendment." *Polich v. Burlington*  
14 *Northern, Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991) (citation omitted).

15 Federal Rules of Civil Procedure, Rule 12(b)(6) provides, in pertinent part:

16 Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,  
17 counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive  
18 pleading thereto if one is required, except that the following defenses may at the option  
19 of the pleader be made by motion: ... (6) failure to state a claim upon which relief  
20 can be granted ... .

21 Courts have increasingly recognized that under appropriate circumstances these motions are  
22 useful and even necessary tools for disposing of insupportable claims. Thus, while the Court, in  
23 deciding a motion to dismiss, must accept as true all material allegations of a complaint and  
24 construe them in the light most favorable to the plaintiff. *N.L. Industries, Inc. v. Kaplan*, 792 F.2d 896,  
25 898 (9th Cir. 1986). "To survive a motion to dismiss, a complaint must contain sufficient  
26 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v.*  
27 *Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570  
28 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court  
to draw the reasonable inference that the defendant is liable for the misconduct alleged." (*Ibid.*) In  
other words, the relevant

1 question for purposes of a motion to dismiss for failure to state a claim is “whether, assuming the  
2 factual allegations are true, the plaintiff has stated a ground for relief that is plausible.” Ashcroft,  
3 *supra*, 129 S.Ct. at 1959. However, the Court need not accept conclusory allegations, unwarranted  
4 deductions or unreasonable inferences. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th  
5 Cir. 1981), *cert. denied*, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed. 2d 474 (1981). Nor need a court  
6 assume that Plaintiff can prove facts different from those it has alleged. Associated Gen. Contractors  
7 of Calif. v. California State Council of Carpenters 459 U.S. 519, 526 (1983). As one court has put  
8 it, courts need not “swallow the plaintiff’s invective hook, line, and sinker; bald assertions,  
9 unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited.” Aulson v.  
10 Blanchard 83 F.3d 1, 3 (1st Cir. 1996).

11 Federal Rule of Civil Procedure 12(b)(6), made applicable to bankruptcy by Federal Rule of  
12 Bankruptcy Procedure 7012, is similar to the common law general demurrer in that it tests the legal  
13 sufficiency of the claim or claims stated in the Plaintiff’s unsigned complaint Doc 1 and First  
14 Amended Complaint Doc 6, without leave of court to amend. A court must decide whether the facts  
15 alleged, if true, would entitle the plaintiff to some form of legal remedy. *Conley v Gibson*, 355 U.S.  
16 41, 45-46, 78 S.Ct. 99, 102 (1957); De La Cruz v Tormey 582 F.2d 45, 48 (9th Cir. 1978).

17 Therefore, a Rule 12(b)(6) dismissal motion is proper where there is an absence of  
18 sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dept, 901 F.2d  
19 696, 699 (9th Cir. 1990); Graehling v. Village of Lombard, III, 58 F.3d 295, 297 (7th Cir. 1995). If  
20 a critical threshold element is missing from the Plaintiff’s Complaint, a motion to dismiss under  
21 Rule 12(b)(6) must be granted. This is precisely the problem with Plaintiff’s Unsigned Complaint  
22 and First Amended Complaint - alleged facts are not stated with the requisite specificity.

23 i. **PLAINTIFF’S COMPLAINT IS PROPERLY DISMISSED PURSUANT**  
24 **TO F.R.C.P. §§9(B), 12(B)(6) AND F.R.B.P. §§7009, 7012**

25 (1) **PLAINTIFF’S 2nd CAUSE OF ACTION FOR FRAUD UNDER**  
26 **11 U.S.C. §523(A)(2)(A) IS PROPERLY DISMISSED**

27 The holding in In re Rubin, 875 F.2d 755, 759 (9<sup>th</sup> Cir., 1989) provides:

28 The elements of a claim for fraudulent misrepresentation under section 523(a)(2)(A)

1 are: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor  
2 knew at the time to be false, (4) that the debtor made with the intention of deceiving  
3 the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was  
4 reasonable, and (7) that damage proximately resulted from the misrepresentation.

5 To support a 11 U.S.C. §523(a)(2)(A) action, Plaintiff must establish that Defendant made  
6 a false representation with respect to existing and ascertainable facts. *In re Fravel*, 143 Bankr. 1001  
(Bankr. E.D.Va.1992); *In re Schwartz & Meyers*, 130 Bankr. 416 (Bankr. S.D.N.Y.1991).

7 Section 523(a)(2)(A) of the Bankruptcy Code provides in pertinent part that "A discharge  
8 under this title does not discharge an individual debtor from any debt or money, property, services,  
9 or an extension, renewal or refinancing of credit to the extent obtained by false pretenses, or false  
10 representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial  
11 condition." A claim under this "fraud" exception requires that the claim satisfy the heightened  
12 pleading requirements for fraud pursuant to Fed. R. Civ. P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574  
13 (Bankr. N.D. Ill. 2009)(citations omitted), as well as *In re Kanaley*, 241 B.R. 795, 803 (Bankr.  
14 S.D.N.Y. 1991).

15 Federal Rule of Civil Procedure Rule 9(b) and Federal Rule of Bankruptcy Procedure 7009  
16 states "In alleging fraud, a party must state with particularity the circumstances constituting fraud or  
17 mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."  
18 While intent or knowledge may be averred generally, however, the plaintiff must still plead the events  
19 claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d  
20 Cir. 1987), which may be accomplished by pleading facts consistent with certain well established  
21 "badges of fraud." *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2004). In addition to providing a  
22 defendant with fair notice of the claim, Rule 9(b) serves the purpose of protecting a defendant from  
23 harm to his or her reputation or good-will by unfounded allegations of fraud, and by reducing the  
24 number of strike suits. *In re Actrade Financial Technologies Ltd.*, 337 B.R. 791, 801 (Bankr.  
25 S.D.N.Y. 2005).

26 Those three terms, as used in section 523(a)(2)(A), embody different concepts in Congress'  
27 use of the disjunctive, or evidence an intent to deny a discharge under any such term." The term "false  
28 pretenses" is defined as conscious, deceptive or misleading conduct, calculated to obtain or deprive

1 another of property. It includes an implied misrepresentation or conduct intended to create a false  
2 impression. The term "false representation" requires that the plaintiff present proof that the defendant  
3 (1) made a false or misleading statement, (2) with the intent to deceive, and (3) to cause the plaintiff  
4 to turn over money or property to the defendant. The term "actual fraud" requires proof of the five  
5 fingers of fraud, or five elements of fraud, which are (1) a misrepresentation, (2) fraudulent intent or  
6 scienter, (3) intent to induce reliance, (4) justifiable reliance, and (5) damage. A reckless  
7 representation or silence regarding a material fact may in some cases constitute the requisite falsity,  
8 and in certain cases a causal link, as opposed to actual reliance, may establish the creditor's injury.  
9 Although the statute could conceivably be read as providing that one's debt may not be subject to the  
10 discharge if one merely benefits from someone else's fraud, in keeping with the Congressional purpose  
11 behind section 523 that is not the approach taken by the courts. The case law requires fraudulent  
12 conduct, false pretenses, or false representations on the part of the particular debtor in question, either  
13 directly or by imputation.

14 Nothing in the Plaintiffs' complaint would satisfy Federal Rule of Civil Procedure Rule 8 and  
15 Federal Rule of Bankruptcy Procedure 7008, let alone FRCP 9(b), as to whether a claim has been  
16 alleged under Bankruptcy Code section 523(a)(2)(A) for fraud, false pretenses or  
17 misrepresentation. The (Complaint ¶ 52) laments: "Debtor engaged in a fraudulent scheme to  
18 place her most substantial asset, the condominium located at 4476 Alderport, Unit 53, out of reach  
19 of Plaintiff, who, as an individual Board Member, was in the process of obtaining an attorney's fees  
20 award in excess of \$40,000.00 for successfully defending Debtor's civil cross claims" but clearly  
21 no misrepresentation by Defendant has been alleged here, or any intent on her part to induce  
22 reliance thereon. It not only does not plead sufficient "badges of fraud" as to Defendant, it also  
23 does not plead any facts, as opposed to conclusions, describing her fraud. Without more, therefore,  
24 the complaint's claim under section 523(a)(2)(A) of the Bankruptcy Code is properly dismissed.

25 Further, Plaintiff's Second Cause of Action for Money Obtained by False Pretenses and  
26 Actual Fraud Pursuant to 11 U.S.C. §523(a)(2)(A) is based on an allegation that Defendant, in her  
27 operation of her various businesses including JP and JSC, operated these business as her alter ego  
28 since October 18, 2018, (the "Alter Ego Companies") in an effort to shield herself from personal  
liability while at the same time using funds of these business for personal purpose.(Complaint ¶ 57).

1 This claim is properly dismissed as Plaintiff is not the Chapter 7 Trustee and therefore lacks the  
2 standing to raise a claim under 11 U.S.C. § 548.

3 11 U.S.C. § 548 gives the "trustee the ability to avoid any transfer of interest of the debtor  
4 in property, or any obligation incurred by the debtor that was made or incurred within one year  
5 before the date of the filing of the petition". "A trustee may set aside a transfer of an interest of the  
6 debtor if the debtor made the transfer ..." *In re Cohen*, 300 F.3d 1097 (9th Cir. 2002). The court  
7 continued "A trustee's right to recover differs dramatically depending on which section is  
8 applicable" See also *Schafer v. Las Vegas Hilton Corp. (In re Video Depot)*, 127 F.3d 1195,  
9 1197-98 (9th Cir. 1997). "Section 548(a)(2) of the Bankruptcy Code sets forth the avoiding powers  
10 of a **bankruptcy trustee** as they relate to fraudulent transfers of a debtor's interest in  
11 property." (Emphasis added) *In re BFP*, 974 F.2d 1144 (9th Cir.1992).

12 11 U.S.C. § 544 like Section 547 also vests power in the Trustee for the benefit of the  
13 estate. Like section 547 it specifically states rights for the trustee it clearly states "The **trustee**  
14 shall have... the rights and powers of avoidance of any transfer of property of the debtor or any  
15 obligation incurred by the debtor..." (Emphasis added).

16 "Section 544 of the Bankruptcy Code, the "strong-arm clause," grants a trustee in  
17 bankruptcy "the rights and powers of a hypothetical creditor who obtained a judicial lien on all of  
18 the property in the estate at the date the petition in bankruptcy was filed." *In re Commercial W.*  
19 *Fin. Corp.*, 761 F.2d 1329, 1331 n.2 (9th Cir. 1985) (citing 11 U.S.C.&sect; 544(a)(1)). "One of  
20 these powers is the ability to take priority over, or 'avoid' security interests that are unperfected  
21 under applicable state law . . . ." Id. Avoiding such interests relegates them to the status of a  
22 general unsecured claim. See 5 *Collier on Bankruptcy* ¶¶ 544.02, 544.05 (Lawrence P. King ed.,  
23 15th ed. rev. 2000). *Neilson v. Chang*, 253 F.3d 520 (9th Cir. 2001).

24 F.The rule is clear, the rights which Plaintiff seeks to enforce belong solely to the trustee, they are  
25 not Plaintiff's to exercise.

26 (2) **PLAINTIFF'S 3<sup>rd</sup> CAUSE OF ACTION UNDER 11 U.S.C.**  
27 **§727(a)(2)(A) IS PROPERLY DISMISSED**

28 11 U.S.C. §727(a)(2)(A) - Discharge provides:

(a) The court shall grant the debtor a discharge, unless—  
(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—  
(A) property of the debtor, within one year before the date of the filing of the petition  
[Emphasis added]

Two elements comprise an objection to discharge under 11 U.S.C. § 727(a)(2)(A): 1) a disposition of property by or at the sufferance of the debtor by transfer, removal, destruction, mutilation, or concealment; and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor through the act disposing of the property. Both elements must take place within 1-year of the Petition Date of 7-09-2021 (the one-year pre-filing period); acts and intentions occurring before this period are forgiven. *In re Lawson*, 122 F3d 1237 (CA9 1997).

This section is construed liberally in favor of the debtor and strictly against those objecting to discharge. Before a court can refuse a discharge under 11 U.S.C. § 727(a)(2)(A), it must be shown that there was an actual transfer of valuable property belonging to the debtor which reduced the assets available to the creditors and which was made with fraudulent intent. *In re Garcia*, 168 B.R. 403 (D. Ariz. 1994).

Plaintiff's Third Cause of Action is for Denial of Defendants' Discharge Pursuant to 11 U.S.C. § 727(a)(2)(A) ) is based on an allegation that: "Defendant engaged in an ongoing scheme to avoid, delay, hinder and defraud their creditors, including Plaintiff, who was in the process of obtaining judgments against by concealing and transferring property, that was rightfully hers, to her Alter Ego Companies to prevent plaintiff from collecting on debts. (Complaint ¶ 42).

The Complaint is silent as to what specific assets were transferred to Alter Ego Companies - and the dates of said alleged transfers - to prevent the only creditor, Huntington Beach Gables Homeowners Association from collecting on their September 2018, \$3070.00 judgment.

Ironically, of the single asset that Plaintiff does define as having been sold 4476 Alderport Unit 53, (ie., transferred), occurred **beyond the one-year pre-filing period** (7-9-2020 - 7-9-2021). Complaint ¶ 24, FAC ¶ 35 & 36 identifies real property located at 4476 Alderport Unit 53 Huntington Beach, CA., 92649 that was sold to Mr. Nickel on October 31, 2018

real property that was sold by the Debtor on 10-31-2018 ( beyond the one-year pre-filing period (7-9-2020 -7-9-2021)).

Complaint ¶ 11; 24; FAC ¶13, 35, 36 identifies (1) real property (4476 Alderport Huntington Beach, CA; 92649) that was once owned by the Debtor, but is silent as to whether it was transferred within the one-year pre-filing period (7-9-2020 - 7-9-2021).

Complaint ¶ 26 identifies (1) 2014 Manufactured Home "on or about November 1, 2018, Debtor purchased the Lisa Ryan's (sic) mobile home located at 16222 Monterey Lane, Space 376," but is silent as to whether it was transferred within the one-year pre-filing period (7-9-2020 - 7-9-2021).

Chattel	Transfer Date
2014 Skyline Custom Villa Complaint ¶30 FAC ¶ 50 (Transferred for \$225,000.00, 30-yr Manufacture Financing Secured Promissory Note)	Within 2 years of the Petition Date 11/16/2018 admittedly transferred within four years.
Complaint ¶32; FAC ¶ 57 2/26/2019 "Debtor and J-Sandcastle Co LLC, became the joint owners of J-Pad"	02/26/2019 admittedly transferred within four years. 01/2/2020 admittedly transferred within four years.
FAC¶ 58 1/8/2020, "Robert McLelland....became the sole owner of J-Pad"	01/29/2020 admittedly transferred within four years.
Complaint ¶34; FAC ¶1/29/20, J-Pad and Family Members of Debtor became owners of JSC.	

There is no factual allegation in the Complaint of any subjective intent on the Defendants' part to hinder, delay or defraud a creditor, or any creditor, from 7-9-2020 - 7-9-2021.

Accordingly, Plaintiff's 3<sup>rd</sup> Cause of Action under 11 U.S.C. §727(a)(2)(A) is properly dismissed.

### (3) PLAINTIFF'S 4<sup>th</sup> CAUSE OF ACTION UNDER 11 U.S.C.

#### §727(a)(4) IS PROPERLY DISMISSED

##### 11 U.S.C. §727(a)(4)(A) - Discharge provides:

- (a) The court shall grant the debtor a discharge, unless (4) the debtor knowingly and fraudulently, in or in connection with the case—
  - (A) made a false oath or account

1 A plaintiff seeking denial of a debtor's discharge under § 727(a)(4)(A) must prove that:  
2 (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the  
3 statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the  
4 statement related materially to the bankruptcy case. Matter of Beaubouef, 966 F.2d 174, 178 (5th  
5 Cir 1992), cited in In re Spitko, 357 B.R. at 312. Accord Keeney v. Smith (In re Keeney), 227 F.3d  
6 679, 685 (6th Cir. 2000); Moore v. Strickland (In re Strickland), 350 B.R. 158, 163 (Bankr. D. Del.  
7 2006). See also In re Zimmerman, 320 B.R. at 806.

8 Not all omissions or errors, however, lead to denial of a discharge. A debtor that is merely  
9 careless in preparing schedules and statements or in testimony in connection with a case may  
10 receive a discharge absent proof of fraudulent intent. Bauman v. Post (In re Post), 347 B.R. 104,  
11 112 (Bankr. M.D. Fla. 2006); Estate of Harris v. Dawley (In re Dawley), 312 B.R. 765, 785  
12 (Bankr. E.D. Pa. 2004). Further, a debtor who relies on the advice of counsel who is generally aware  
13 of all relevant facts also will not be found to have made a false oath. In re Topper, 229 F.2d 691, 693  
14 (3d Cir. 1956) cited in In re Georges, 138 Fed. Appx. 471, 472 (3d Cir. 2005); In re Dawley, 312 B.R.  
15 at 787.

16 A party objecting to discharge under § 727(a)(4)(A) must prove by a preponderance of the  
17 evidence that "the false oath [was] fraudulent and material." Swicegood, 924 F.2d at 232.

18 Plaintiff's Fourth Cause of Action is for Denial of Defendants' Discharge for False  
19 Oath Pursuant to 11 U.S.C. §727(a)(4)(A) is based on an allegation that the Defendant omitted  
20 assets in her bankruptcy, and failed to disclose said assets in her 341(a) examination - yet  
21 the Complaint acknowledged that the Debtor amended her bankruptcy schedules several  
22 times, correcting and remedying what she inadvertently omitted beforehand. In In re Beaubouef,  
23 966 F.2d 174, 178 (5th Cir. 1992) the Court clearly stated that an opportunity to clear up  
24 inconsistencies and omissions with amended schedules may be considered in analyzing findings of  
25 actual intent to defraud); Gullickson v. Brown (In re Brown), 108 F.3d 1290, 1294-95 (10th Cir.  
26 1997). Here, the Defendant voluntarily amended ((9-7-2021, 9-22-2021, 10-14-2021),  
27  
28

her Schedules and Statement of Financial Affairs before this Complaint was ever filed (10-18-2021-bk-Doc-28) or [ap-01096-[Doc-1] and ap-01096 10-19-2021 [Doc-3] and 11-16-2021 FAC [Doc-6] before she even knew that a 727 complaint was being filed against her. The Debtor seized her own opportunities to clear up any inconsistencies or omissions with amended Schedules and Statement of Financial Affairs demonstrating that she lacked actual intent to defraud.

Under the "Relations Back" Doctrine of F.R.C.P. 15, and F.R.B.P 7015, said amendments (1)9-07-2021 [Doc-15], (2) 9-22-2021 [Doc-16], (3) 10-14-2021 [Doc-22], (4) 11-16-2021 [Doc-37], (5) 11-22-21 [Doc-38], (6) 11-23-2021 [Doc-39], (7) 12-1-21 [Doc-42], (8) 3-11-2022 [Doc-72], (9) 3-15-22 [Doc-75] relate back to the initial bankruptcy filing of 7-09-2021, and therefore verify the integrity of this Defendant to maintain the accuracy of her Petition.

The Complaint itself acknowledged the Defendant's amendments (FAC ¶ 98 calling them "knowingly signed the schedules") and how they cured and remedied what was accidentally omitted in the initial filing:

Asset Allegedly Omitted in Initial Bankruptcy	Reality	Cured By Amendment
Complaint ¶	Defendants' Statement of Financial Affairs of 9-7-2021 [Doc 15] # 27, listed 2 LLC's: (1) J-Sandcastle Co (2) J-Pad, LLC See Complaint ¶ 25 &26	

1 2 3 4 5 6 7	FAC ¶ 103: Defendant stted she had not sold, traded.... not list any transfers under Question 18 of her SOFA regarding transfers of property in the two (2) years preceding the Petition Date	There were no transfers to record of real estate within the two (2) years preceding the Petition Date (7-9-2019 -7-9-2021). Complaint ¶ 24 FAC ¶13 identifies real property located at 4476 Alderport Huntington Beach CA 92649 that was sold by the Debtor on 10-31-2018 (beyond the one-year pre-filing period (7-9-2020 - 7-9-2021)).	
8 9 10 11 12 13			

The Complaint cites no facts that the initial errors that were corrected by amendments were nothing more than innocent and inadvertent oversights, and no facts were cited in the Complaint that they were knowingly and fraudulently made false oaths.

The Complaint is silent as to whether the alleged concealed information would have or could have revealed assets available for creditors, especially if the assets in question were exempted . The Complaint does not allege that the Debtor made a false oath with fraudulent intent. In fact, the evidence will show if this case goes to trial that the Defendant was not adequately interrogated by her retained attorney [subsequently rescinded the retainer agreement] in the initial consultation and preparation of her schedules. Such reliance on an attorney can, with other evidence, demonstrate a lack of actual intent. *Parnes et al. v. Parnes(In re Parnes)*, 200 B.R. 710, 715(Bankr. N.D. Ga. 1996). Accordingly, Plaintiff's 4<sup>th</sup> Cause of Action under 11 U.S.C. §727(a)(4) is properly dismissed.

(5) **PLAINTIFF'S 5TH CAUSE OF ACTION UNDER 11 U.S.C. §727(a)(5) IS  
PROPERLY DISMISSED**

The elements that comprise an objection to discharge under 11 U.S.C. § 727(a)(5): the debtor failed to explain satisfactorily, **before determination of denial of discharge** under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities. [Emphasis added]

Here, no trial has been scheduled, and Defendant explained satisfactorily, *before* determination of denial of discharge any loss of assets or deficiency of assets to meet the debtor's liabilities in her amendment of (1) 9-7-2021 [Doc-15], (2) 9-22-2021 [Doc-16-17], (3) 10-14-2021 [Doc-22], (4) 11-16-2021[Doc-37], (5) 11-22-2021 [Doc-38], (6) 11-23-2021[Doc-39], (7) 12-1-2021 [Doc-42], (8) 3-11-2022 [Doc-72], (9) 3-15-2022[Doc-75].

11 U.S.C. § 727(a)(5) does not explicitly require a creditor to call upon a debtor to explain a loss of assets prior to filing an adversary proceeding. A denial of discharge under § 727(a)(5) requires only that the debtor fail to explain a loss of assets “before determination of denial of discharge under this paragraph.” To require a creditor to seek an explanation from the debtor prior to filing an adversary hearing would add an additional and redundant layer of inquiry to § 727(a)(5). Accordingly, Plaintiff’s 5<sup>th</sup> Cause of Action under 11 U.S.C. §727(a)(5) is properly dismissed.

(5) **PLAINTIFF’S ALLEGED CAUSE OF ACTION FOR ALTER EGO PROPERLY  
DISMISSED.**

In *AHCOM, Ltd. v. Smeding*, 2010 WL 4117736, 2010 DJDAR 16125, Case No. 09-16020 (9th Cir. Oct. 21, 2010), the Ninth Circuit concluded, “California law does not recognize an alter ego claim or cause of action that will allow a corporation and its shareholders to be treated as alter egos for the purposes of all the corporation’s debts.” The Ninth Circuit overruled opinions relied on a California state court case, *Stodd v. Goldberger*, 73 Cal. App. 3d 827 (1977), for the proposition that California recognized a general alter-ego claim. Accordingly, Plaintiff’s alleged Cause of Action for alter ego is properly dismissed.

1 **c. CONCLUSION**

2 Plaintiff has not demonstrated, nor can she state a viable claim under any cause of action  
3 in her Complaint; lacking liability and filed for the purpose of harassment, unreasonable delay,  
4 and to obtain an unfair advantage in the *Nickel vs, Huntington Beach Gables Homeowners*  
5 *Association, et al.* state court action filed by a bona fide purchaser of the Gallian real property  
6 in October 2018.

7 Particularly evident when one examines the Complaint's claims, which consists of no  
8 more than the gratuitous and bare-bones boilerplate conclusions minimally invoking this  
9 Court's jurisdiction. For the above reasons, Defendant prays that this Court dismiss Plaintiff's  
10 Complaint with prejudice, that Plaintiff not be granted leave to amend, that Plaintiff take  
11 nothing by her Complaint, and that Defendants' alleged debt to Plaintiff be discharged.  
12 Further, Defendant prays that this Court issue a finding of fact that the claims brought by  
13 Plaintiff are dischargeable, and that pursuant to 11 U.S.C. §524(a)(1) and (2), this discharge  
14 should also serve to void any future judgment to determine the personal liability of  
15 Defendant and operate as a permanent injunction against any actions whether commenced  
16 pre-petition or post-petition.


17 Further, Defendant prays that this Court award Defendant costs and reasonable  
18 attorney's fees in an amount which will be ascertained, pursuant to 11 U.S.C. §523(d)  
19 and Federal Rule of Bankruptcy Procedure 9011.

20 According, Defendant respectfully request that the Court enter an order granting the *Motion*  
21 in its entirety, and providing for such other and further relief as this Court deems just.

22 I declare under penalty of perjury the foregoing is true and correct. Signed at Huntington  
23 Beach CA. County of Orange.

24  
25 DATED: November 7, 2022

Respectfully submitted.

26   
27 JAMIE LYNN GALLIAN  
28 Debtor and Defendant,  
IN PRO PER

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
5801 Skylab Road, Huntington beach, CA 92647

A true and correct copy of the foregoing document entitled: **MOTION TO DISMISS COMPLAINT: 1. TO DETERMINE NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2)(A); 2. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(2)(A); 3. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(4)(A); 4. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(5); AND 5. FOR A FINDING OF ALTER EGO LIABILITY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 11/7/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

**Jeffrey I Golden (TR)** lwerner@wglp.com; jlg@trusteesolutions.net; kadele@wglp.com

**United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 11/7/2022 I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Judge Scott C. Clarkson**  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 W. Fourth Street, Ste. 5060  
Santa Ana, CA 92701-4593

**Plaintiff Janine B. Jasso, Esq.** P.O. Box 370161  
**Email Address:** El Paso, Tx  
**j9\_jasso@yahoo.com** 79937

☐ Service information continued on attached page

November 7, 2022 Robert McLelland  
Date Printed Name

*Robert McLelland*  
Signature bobwentflying@yahoo.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**ADDITIONAL SERVICE INFORMATION (If needed):**

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

Aaron E DE Leest on behalf of Trustee Jeffrey I Golden (TR)  
adeleest@DanningGill.com, danninggill@gmail.com;adeleest@ecf.inforuptcy.com

Robert P Goe on behalf of Creditor The Huntington Beach Gables Homeowners Association  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Robert P Goe on behalf of Plaintiff The Huntington Beach Gables Homeowners Association  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Jeffrey I Golden (TR) lwerner@wglp.com, jig@trustesolutions.net;kadele@wglp.com

D Edward Hays on behalf of Creditor Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

D Edward Hays on behalf of Interested Party Courtesy NEF  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

D Edward Hays on behalf of Plaintiff Houser Bros. Co.  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

Brandon J Iskander on behalf of Creditor The Huntington Beach Gables Homeowners Association  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Brandon J Iskander on behalf of Plaintiff The Huntington Beach Gables Homeowners Association  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Eric P Israel on behalf of Trustee Jeffrey I Golden (TR)  
eisrael@DanningGill.com, danninggill@gmail.com;eisrael@ecf.inforuptcy.com

Laila Masud on behalf of Interested Party Courtesy NEF  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Plaintiff Houser Bros. Co.  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Mark A Mellor on behalf of Defendant Randall L Nickel  
mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com

Mark A Mellor on behalf of Interested Party Courtesy NEF mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com

Valerie Smith on behalf of Interested Party Courtesy NEF claims@recoverycorp.com

United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

State of California.

**F 9013-3.1.PROOF.SERVICE**

JAMIE LYNN GALLIAN  
16222 Monterey Lane Unit 376  
Huntington Beach, CA 92649  
(714)321-3449  
jamiegallian@gmail.com

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

JAMIE LYNN GALLIAN

Debtor,

JANINE JASSO

Plaintiff,

vs.

JAMIE LYNN GALLIAN

Defendant

CASE NO. 8:21-bk-11710-SC  
Adv. 8:21-ap-01096-SC  
Chapter 7

DEFENDANTS' REPLY AND  
OPPOSITION TO PLAINTIFF'S  
UNTIMELY RESPONSE (ECF 91)  
TO MOTION TO DISMISS, (ECF.  
63)

Date: January 10, 2023  
Time: 1:00 p.m.  
Dept: 5C Via Zoom.Gov  
411 W. Fourth Street  
Santa Ana, CA 92701

**TO THE HONORABLE SCOTT C. CLARKSON, UNITES STATES  
BANKRUPTCY JUDGE, PLAINTIFF, JANINE JASSO, THE OFFICE OF THE**

1 UNITED STATES TRUSTEE, THE TRUSTEE AND HIS COUNSEL, AND ALL  
2 PARTIES IN INTEREST.

3 JAMIE LYNN GALLIAN hereby opposes ECF 91. Debtor has not received  
4 Plaintiff's Opposition as declared in the Proof of Service ECF 91 at page 23 of 23.  
5 Debtor downloaded ECF 91 from PACER. It appears a family member of  
6 Plaintiff, David Jasso, completed the Proof of Service declared on 1/01/2023.  
7

8 Notedly, F 9013-3.1. PROOF.SERVICE Section 1 states TO BE SERVED  
9 BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF). However, no  
10 list of persons to be served via the NEF system is attached to the pleading or Proof  
11 of Service.  
12

13 Second, the Chapter 7 Trustee, Jeffrey Golden was not listed, therefore not  
14 served.  
15

16 Third, it appears after reading Ms. Jasso's Declaration, she declares under  
17 penalty of perjury, and as an Officer of the Court, SBN 170188, she was not served  
18 the pleading by Robert McLelland.  
19

20 Mr. McLelland has provided copies from his email account OC Services  
21 ([bobwentflying@yahoo.com](mailto:bobwentflying@yahoo.com)) for the proposition Ms. Jasso was electronically  
22 served with success on the dates stated on the f 9013-3.1Proof.Service filed with  
23 Debtors Motion to Dismiss. ECF 63.  
24  
25  
26  
27  
28

1 Additionally, in reviewing the Docket 8:21-ap-01096, ECF 91 appears noted  
2 on the Docket with a date of January 1, 2023, (New Year's Day, a Court holiday)  
3 but entered January 3, 2023.  
4

5 MEMORANDUM POINTS & AUTHORITIES

6 BACKGROUND

7 On July 9, 2021, Defendant initiated the underlying bankruptcy case by  
8 filing a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11  
9 U.S.C. In re JAMIE LYNN GALLIAN No. 8:21-bk-11710-SC, (ECF. 1).  
10

11 On Schedule E/F to her bankruptcy petition Defendant listed Plaintiff as one  
12 of six creditor(s) in addition to The Huntington Beach Gables Homeowners  
13 Association all claiming some interest in the same (1) nonpriority unsecured claim  
14 of \$ 46,138.00. Debtor listed Plaintiff as follows: "Janine Jasso, c/o Huntington  
15 Beach Gables Homeowners Association No. 8:21-bk-11710-SC, ECF 1 at 26  
16 (internal paginations, Schedule E/F at 3/11, creditor 4.6). On the same day, July 9,  
17 2021, Defendant also filed a Verification of Master Mailing List of Creditors [LBR  
18 1007-1(d)], certifying that the master mailing list of creditors filed in the  
19 bankruptcy case was complete, correct, and consistent with the Defendant's  
20 schedules. No. 8:21-bk-11710-SC, ECF 1 at 56. Debtor listed Plaintiff Janine Jasso  
21 P.O. Box 370161 El Paso, TX 79937.  
22

23 On July 9, 2021, the court filed and entered an Official Form 309A, "Notice  
24 of Chapter 7 Bankruptcy Case — No Proof of Claim Deadline," ECF. 7 which  
25 stated in bold "This notice has important information about the case for creditors,  
26 debtors, and trustees, including information about the meeting of creditors and  
27 deadlines. Read all pages carefully." No. 8:21-bk-11710-SC, ECF. 7 at 3/5.  
28

1 The Official Form 309A, Notice of Chapter 7 Bankruptcy Case, also stated  
2 that “Creditors who assert that the debtors are not entitled to a discharge of any  
3 debts or who want to have a particular debt excepted from discharge may be  
4 required to file a complaint in the bankruptcy clerk's office within the deadlines  
5 specified in this notice, (See line 9 for more information.)[.]” Id. Line 6 of Official  
6 Form 309A, Notice of Chapter 7 Bankruptcy Case, listed the address, operating  
7 hours and contact phone number for the Bankruptcy Court Clerk's office with an  
8 explanation that “Documents in this case may be filed at this address.” Id. at 4.  
9 Line 7 of the Official Form 309A, Notice of Chapter 7 Bankruptcy Case, under the  
10 heading “Meeting of Creditors,” stated the date of the meeting of creditors in bold:  
11 “August 18, 2021 at 9:00 a.m.” Id. Line 9 of the Official Form 309A, Notice of  
12 Chapter 7 Bankruptcy Case, under the heading “Deadlines,” stated in bold: “File  
13 by the deadline to object to discharge or to challenge whether certain debts are  
14 dischargeable: ... Filing deadline: 10/18/21.” Id.<sup>1</sup> Thus, the Official Form 309A,  
15 Notice of Chapter 7 Bankruptcy Case, stated that the 11 U.S.C. § 341(a) Meeting  
16 of Creditors was scheduled for August 18, 2021, and objections for discharge had  
17 to be filed no later than October 18, 2021. Id. (emphasis added).

20 On July 9, 2021, the court filed and entered the Master Mailing List of  
21 Creditors on the case docket, and included therein was: “Janine Jasso, c/o Gordon  
22 Rees Skully & Masukhani, 633 W. 5<sup>th</sup> Street, 52<sup>nd</sup> Floor, Los Angeles, CA 90071-  
23 2005; Janine Jasso P.O. Box 370161, TX 79937-0161 No. 8:21-bk-11710-SC, ECF  
24 7 (listing 36 total creditors).

26 On July 11, 2021, the Bankruptcy Noticing Center filed and entered its  
27 Certificate of Notice, ECF 7, attesting that the Official Form 309A, Notice of  
28

Chapter 7 Bankruptcy Case, ECF 15, was served on all creditors, including Janine Jasso. ECF 7 at 1.

According to the Certificate of Notice, the Bankruptcy Noticing Center served the Official Form 309A, Notice of Chapter 7 Bankruptcy Case, ECF 7, on “Janine Jasso, P.O. Box 370161, TX 79937-0161” and a second address “Janine Jasso c/o Gordon Rees Skully & Masukhani, 633 W. 5<sup>th</sup> Street, 52<sup>nd</sup> Floor, Los Angeles, CA 90071-2005 “ both by first class mail on July 11, 2021. Id.

On October 18, 2021, Plaintiff filed her “Complaint for Determination of Dischargeability and Objecting to Debtor’s Discharge Pursuant to Sections 523 And 727 of the Bankruptcy Code.” ECF 1 (the “Complaint”). The face of the Complaint indicated that Plaintiff was filing it as “Plaintiff, In Pro Per” Id. The Complaint was filed un-signed, without an original wet signature. Plaintiff dated the Complaint October 18, 2021. Id. at 14. The face of the complaint is stamped FILED, Clerk U.S. Bankruptcy Court Central District of California BY: (No initials were noted) by Deputy Clerk.

A Proof of Service F 901303.1.PROOF.SERVICE was attached to the Complaint, Id 91. The Proof of Service contained the address of party over the age of 18 and not a party to this bankruptcy case or adversary proceeding as 3250 Fairesta Street, La Crescenta, CA 90214.

Section 2 of F 9013-3.1.Proof .Service, states: On (date) 10/18/2021, I served the following persons and/or entities at the last known address in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and

1 addressed as follows. Listing the judge here constitutes a declaration that mailing  
2 to the judge will be completed no later than 24 hours after the document is filed.  
3 Hon. Erithe A. Smith United States Bankruptcy Court Central District of California  
4 Ronald Reagan Federal Building 411 West Fourth Street, Suite 5040/Courtroom  
5 5A, Santa Ana, CA 92701-4593.

6 The debtor is not listed on the Proof of Service of Document. ECF 91. Request  
7 Judicial Notice. An Adversary Proceeding Cover Sheet is attached 1 of 2.  
8 However, the Cover Sheet is not signed nor dated by Plaintiff, and Page 2 of the  
9 Cover Sheet is not attached. Request Judicial Notice.

10  
11 On October 19, 2021, Plaintiff filed an "Original signature page to  
12 Complaint and Adv. Cover Sheet"; (Attachments: # 1 Original Signature Page to  
13 Adv Cover Sheet. (Entered: 10/19/2021) ECF 3

14 The identical 10/18/2021 Proof of Service F 901303.1.PROOF.  
15 SERVICE was attached to the 10/19/2021 ECF 3, Complaint, Id 91. The Proof of  
16 Service contained the address of party over the age of 18 and not a party to this  
17 bankruptcy case or adversary proceeding as 3250 Fairesta Street, La Crescenta, CA  
18 90214.

19  
20 Section 2 of F 9013-3.1.Proof.Service states: On (date) 10/18/2021, I served  
21 the following persons and/or entities at the last known address in this bankruptcy  
22 case or adversary proceeding by placing a true and correct copy thereof in a sealed  
23 envelope in the United States mail, first class, postage prepaid, and addressed as  
24 follows. Listing the judge here constitutes a declaration that mailing to the judge  
25 will be completed no later than 24 hours after the document is filed.  
26

Hon. Erithe A. Smith United States Bankruptcy Court Central District of California  
Ronald Reagan Federal Building 411 West Fourth Street, Suite 5040/Courtroom  
5A, Santa Ana, CA 92701-4593.

Again, as noted above the debtor again is not listed on the Proof of Service  
of Document. ECF 3. An Adversary Proceeding Cover Sheet attached 1 of 2 filed  
10/19/2021, ECF 3-1.

The “Title Page” of Plaintiff’s Adversary Complaint, ECF 1 and ECF 3,  
indicate JANINE JASSO, an individual, Plaintiff v. JAMIE LYNN GALLIAN, an  
individual; and DOES 1 through 100, inclusive, Defendants.

Plaintiff’s Adversary Complaint, ECF 1 and ECF 3, Title Page, indicate JANINE  
JASSO, an individual, Plaintiff v. JAMIE LYNN GALLIAN, an individual; and  
DOES 1 through 100, inclusive, Defendants.

The following list is as stated in ECF 1 and ECF 3:

Plaintiff First Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
1 Through 100)

Plaintiff Second Cause of Action.....(Against JAMIE LYNN GALLIAN and  
DOES 1 Through 100)

Plaintiff Third Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
1 Through 100)

Plaintiff Fourth Cause of Action.....(Against JAMIE LYNN GALLIAN and  
DOES 1 Through 100).

On October 26, 2021, Defendant’s Answer to Complaint. ECF 4.

On October 27, 2021, Defendant refiled her Answer to Complaint with  
Affirmative Defenses. ECF 5.

1 Debtor requests the Court take judicial notice of an Officer of the Court, Janine  
2 Jasso perjured statements on ECF 91, page 8, Line 6-7. “Debtor answered  
3 Plaintiff’s FAC on December 10, 2021. See DK 13” “Debtor could have made a  
4 timely motion to dismiss before she answered the complaint.” “Plaintiff has done  
5 months of discovery for this case based on Debtor’s bankruptcy schedules prior to  
6 the filing of the FAC and Debtor’s defenses listed in her DK 13 Answer, including  
7 obtaining Debtor and the Defendant J-PAD, LLC (“JP LLC”) and Defendant J-  
8 SANDCASTLE CO LLC (“JSC LLC”) (collectively “Defendant LLCs”) bank,  
9 investment, and real property records from multiple government and private  
10 companies.”  
11

12 Debtor just has one question for Plaintiff...Then why if you did “months of  
13 discovery for this case based on Debtor’s bankruptcy schedules prior to the filing  
14 of the FAC” does the FAC not contain one Cause of Action against J-Pad LLC or  
15 J-Sandcastle Co LLC????????????? And it has to be said, why would Plaintiff file  
16 1691 pages. All Debtor can say again is, “A complaint with the State Bar of  
17 California is forthcoming.”  
18

19 On November 16, 2021, Plaintiff filed her “First Amended Complaint For  
20 Determination of Dischargeability and Objecting to Debtor’s Discharge Pursuant  
21 to Sections 523 And 727 of the Bankruptcy Code.” ECF 6-1 (the “FAC  
22 Complaint”). The face of the Complaint indicated that Plaintiff was filing it as  
23 “Plaintiff . In Pro Per” Id.  
24  
25  
26  
27  
28

1 The “Title Page” Plaintiff’s First Amended Complaint, ECF 6, reads as  
2 JANINE JASSO, an individual, Plaintiff

3 v.

4 JAMIE LYNN GALLIAN, an individual; J-PAD, LLC, a California Limited  
5 Liability Company, J-Sandcastle Co LLC, A California Limited Liability  
6 Company, and DOES 1 through 100, inclusive, Defendants.  
7

8  
9 Plaintiff’s First Amended Complaint ECF 6:

10 Plaintiff First Cause of Action.....(Against JAMIE LYNN GALLIAN and DOES  
11 1 Through 100)

12 Plaintiff Second Cause of Action.....(Against JAMIE LYNN GALLIAN and  
13 DOES 1 Through 100)

14 Plaintiff Third Cause of Action.....(Against JAMIE LYNN GALLIAN and  
15 DOES 1 Through 100)

16 Plaintiff Fourth Cause of Action.....(Against JAMIE LYNN GALLIAN and  
17 DOES 1 Through 100).  
18

19 There are [NO] Causes of Action asserted against J-Pad, LLC or J-Sandcastle Co  
20 LLC in the Operative Complaint filed without Leave of Court. ECF 6

21 On September 20, 2022. Plaintiff filed Notice of Motion and Motion  
22 To Strike Answers Filed Defendants J-Pad, LLC, And J-Sandcastle Co LLC;  
23 Memorandum Of Points And Authorities In Support Thereof. ECF 40  
24

25 On October 25, 2022, the Court held a hearing on Ms. Jasso’s MOT to Strike  
26 the Answer(s) of J-Pad, LLC and J-Sandcastle Co LLC completed and filed by  
27 JAMIE LYNN GALLIAN, the Debtor  
28

1 Debtor believed she was required to file an Answer. The Chapter 7 was  
2 filed on behalf of Jamie Lynn Gallian. Neither J-Pad, LLC nor J-Sandcastle Co  
3 LLC have filed for bankruptcy.

4 Debtor was unaware of the hearing of October 25, 2022, therefore was not in  
5 attendance. More interestingly Plaintiff, Janine Jasso, the Moving party did not  
6 appear at the hearing October 25, 2022. Ms. Jasso's Motion to Strike J-Pad LLC  
7 and J-Sandcastle Co LLC Answer(s) was noted by the Court as [Unopposed].  
8 Debtor has never been absent during any Court hearing in debtor's Chapter 7, in  
9 the almost 20 months this Chapter 7 case has continued on. Debtor was in  
10 complete shock after reviewing the Courts Tentative Ruling Calendar October 25,  
11 2022, and realize she was absent.  
12

13 On November 2, 2022, Order Granting (Janine Jasso) Plaintiff's Motion To  
14 Strike The Answers Of Defendant's J-Pad And J-Sandcastle Co LLC And Entry of  
15 Default. IT IS ORDERED: The Motion is Granted. The Answers Filed By  
16 Defendant J-Pad Are Stricken From The Record (Docket 16 And 17). The  
17 Answers Filed By Defendant J-Sandcastle Co LLC Are Stricken From The Record  
18 (Docket Nos. )14, 15, And 18.

19 In Accordance With These Orders, The Court Further Orders The Clerk To Enter  
20 The Default of Defendant, J-Pad, LLC And Enter The Default Of Defendant, J-  
21 Sandcastle Co. LLC. (BNC-PDF) Related Doc 40.  
22

23 On the Debtor's mind this evening...Plaintiff asserted [NO] Causes of  
24 Action against J-Pad LLC and J-Sandcastle Co LLC in Plaintiff's First Amended  
25 Complaint ECF 6, filed without obtaining leave of court; and also an FAC that  
26 does not relate back to ECF 1 and/or ECF 3 and added new Defendants no less.  
27  
28

1 However, on November 8, 2022, Defendant filed her “Motion for Dismissal of  
2 Adversarial Proceedings Filed by Plaintiff Janine Jasso against Debtor Jamie Lynn  
3 Gallian.” ECF 63. According to the proof of service of the Motion, Robert  
4 McLelland, served a copy of the Motion upon Janine Jasso, Esq. by Email  
5 [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on November 8, 2022. ECF 64.  
6

7 On November 9, 2022, Notice of Motion For: Motion To Dismiss Adversary  
8 Complaint: 1. Determine Dischargeability of Civil Attorney Fees Debt Separate  
9 and Aside Of Fees/Fine Pursuant To Section 523(A)(7); Argument Presented In  
10 Concurrent MSJ For Dismissal Of 1<sup>st</sup> Cause Of Action Section 523(a)(7); 2. To  
11 Determine Nondischargeability Of Debt Pursuant To 11 U.S.C. Section  
12 523(a)(2)(A); 3. For Denial Of Discharge Pursuant To 11 U.S.C. 727(a)(3); 4.  
13 For Denial Of Discharge Pursuant To 11 U.S.C. 727(a)(4); 5. For Denial Of  
14 Discharge Pursuant To 11 U.S.C. 727(a)(5). According to the Proof of Service of  
15 the Motion, Robert McLelland, served a copy of the Motion upon Janine Jasso,  
16 Esq. by Email [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on November 9, 2022. ECF 68.  
17

18 On December 2, 2022, the Court on its own Motion, Order Continuing  
19 Hearing On Motion To Dismiss. IT IS ORDERED. The Hearing On Debtor’s  
20 Motion To Dismiss Complaint filed November 8, 2022, (Docket 63) Is Hereby  
21 CONTINUED TO JANUARY 10, 2023, AT 1:30 P.M. In Courtroom 5C. Any  
22 Response Is Due 14 Days Prior To The Hearing. Replies are Due 7 Days Prior To  
23 The Hearing. (BNC-PDF). Signed on 12/2/2022. On December 4, 2022,  
24 Defendant received by email at [jamiiegallian@gmail.com](mailto:jamiiegallian@gmail.com), BNC Certificate of  
25 Notice – PDF Document. (RE: related document(s) 79 Order. Immediately after  
26 becoming aware of the BNC Certificate of Notice, Ms. Gallian decided to error on  
27 the side of caution because of uncertainty of not knowing whether it was Debtor’s  
28

1 responsibility to give Notice of the Continued Hearing on her Motion to Dismiss  
2 ECF 63, attached the BNC Order ECF 79, to Notice Of Motion For: (1) Motion To  
3 Dismiss Adversary Complaint (Doc 63), Filed 11/8/2022 (2) Order Filed &  
4 Entered Dec. 2, 2022 Continuing Hearing On Motion To Dismiss Is Attached for  
5 The Convenience Of The Court And The Parties. According to the Proof of  
6 Service of the Motion, Robert McLelland, served a copy upon Janine Jasso, Esq.  
7 by Email [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on December 4, 2022. ECF 82, 83.

9 Plaintiff was Ordered on December 2, 2022, through the BNC Certificate of  
10 Notice-PDF ECF 80, stating “Any Response is Due 14 days Prior To The Hearing”,  
11 (which was December 27, 2022), and was the deadline for Plaintiff to file and  
12 serve any written opposition to the Motion pursuant to Local Bankruptcy Rule  
13 9013-1(f)(1). Debtor’s Reply is due 7 days prior to the hearing.

14 As reflected on the case docket for this adversary proceeding, Plaintiff did  
15 not file a written opposition to the Motion by this date. Debtor has not had the  
16 appropriate time to respond to a myriad of excuses Plaintiff presents belied by the  
17 fact Plaintiff filed 5 Documents, (ECF 89, ECF 90, ECF 91, ECF 94, ECF 95  
18 consisting of 1,691 pages.

20 Plaintiff self-reported and admitted in her Response ECF 91, page 4, Line  
21 19-20, to having knowledge of Debtor’s Motion to Dismiss in early December and  
22 admitted to receiving BNC Certificate of Notice – PDF (mailed to the address in  
23 the Master Listing, 7/11/2021, BNC Certificate of Notice, ECF 7, Plaintiff’s P.O.  
24 Box).

25 “I received something from the court [sic] in December, which did not  
26 include any pleadings attached, regarding the Court calendaring Debtor’s  
27 motion.....” ECF 91 page 4 at Line 19-20,  
28

1           Additionally, on December 4, 2022, Debtor prepared a corrected Notice of  
2           Hearing with the new date 1/10/23. Mr. Robert McLelland electronically served  
3           Plaintiff, Janine Jasso [j9\\_jasso@yahoo.com](mailto:j9_jasso@yahoo.com) on December 5, 2022. ECF 82  
4  
5           Federal Rule of Bankruptcy Procedure 4007(c) provides that a complaint to  
6           determine dischargeability of debt under 11 U.S.C. § 523(a) “shall be filed no later  
7           than 60 days after the first date set for the meeting of creditors under [11 U.S.C.] §  
8           341(a) ... On motion of a party in interest, after hearing on notice, the court may for  
9           cause extend the time fixed under this subdivision. The motion shall be filed before  
10          the time has expired.” Since the first date set for the meeting of creditors under 11  
11          U.S.C. § 341(a) as stated in the Official Form 309A, Notice of Chapter 7  
12          Bankruptcy Case, was August 18, 2021, and the Official Form 309A, Notice of  
13          Chapter 7 Bankruptcy Case was served on all creditors, including Plaintiff, the 60-  
14          day deadline to challenge whether certain debts are dischargeable was October 18,  
15          2022. ECF 7 See, Federal Rule of Bankruptcy Procedure 4007(c). This filing  
16          deadline, October 18, 2021, was also expressly stated in the Official Form 309A,  
17          Notice of Chapter 7 Bankruptcy Case. ECF 7. Plaintiff did not file the Complaint  
18          until October 19, 2021, which was after the deadline without an extension.  
19          “[W]hen a creditor seeks to extend the 60-day window to file a nondischargeability  
20          complaint, the creditor must file a motion before the deadline passes and show  
21          cause why the extension is necessary.” Willms v. Sanderson, 723 F.3d 1094, 1100  
22          (9th Cir. 2013) (citing Federal Rule of Bankruptcy Procedure 9006(b)(3) and  
23          noting that the deadline for filing a nondischargeability complaint may be extended  
24          only to the extent and under the conditions stated in Federal Rule of Bankruptcy  
25          Procedure 4007(c)). The Federal Rules of Bankruptcy Procedure “afford [a  
26  
27  
28

1 bankruptcy court] no discretion to extend retroactively the deadline set in [Federal  
2 Rule of Bankruptcy Procedure] 4007(c) for filing nondischargeability complaints.”  
3 Anwar v. Johnson, 720 F.3d 1183, 1185-1186 (9th Cir. 2013) (an attorney's  
4 computer problems did not excuse his late filing of two dischargeability complaints  
5 by 26 and 38 minutes).

6 Therefore, under the Federal Rules of Bankruptcy Procedure, Plaintiff was  
7 required to either file a nondischargeability complaint or a motion to extend the  
8 deadline to file such a complaint, for cause, within 60 days of the 11 U.S.C. §  
9 341(a) meeting of creditors, i.e. by October 18, 2021. Plaintiff did not file the  
10 Complaint or a motion to extend the deadline by October 18, 2021, and therefore,  
11 the Complaint is time-barred.  
12

13 In Willms v. Sanderson, the Ninth Circuit stated that “Ninth Circuit law strictly  
14 construes Rule 4007(c) and courts cannot extend its time limit implicitly where no  
15 such motion is made.” 723 F.3d at 1100 (alterations and citations omitted). The  
16 strict application of Rule 4007(c) is “necessary due to the need for certainty in  
17 determining which claims are and are not discharged.” *Id.* (citation omitted). The  
18 Ninth Circuit has “repeatedly held that the sixty-day time limit for filing  
19 nondischargeability complaints under [§ 523(a)] is strict and, without qualification,  
20 cannot be extended unless a motion is made before the 60-day limit expires.”  
21 Anwar v. Johnson, 720 F.3d at 1187 (citations and internal quotation marks  
22 omitted).  
23

24 The evidentiary record described herein indicates that Plaintiff was aware of the  
25 deadline to file a complaint to determine dischargeability of debt that Defendant  
26 owes to him because: (1) the Official Form 309A, Notice of Chapter 7 Bankruptcy  
27 Case notified creditors of the filing deadline and was served on Plaintiff on July  
28

1 11, 2021 as indicated by the Bankruptcy Noticing Center certificate of notice, ECF  
2 7, which gave him notice of the deadline of over 90 days, more than the minimum  
3 30 day notice required by Federal Rule of Bankruptcy Procedure 4007(c); (2)  
4 Plaintiff was preparing to file the Complaint on the last day of the filing period  
5 under Federal Rule of Bankruptcy Procedure 4007(c) on October 18, 2021,  
6 however Plaintiff did not sign the complaint with a wet signature; (3) If Plaintiff  
7 lives in El Paso Texas as self-reported to this Court, did Ms. Jasso, sign the  
8 Complaint and file the Complaint on October 19, 2021 in the Clerk's Office; (4) In  
9 Ms. Jasso's attempt to file the Complaint on time on October 18, 2021, the  
10 Complaint was filed at the Clerk window without a wet signature was ineffective;  
11 and (5) Ms. Jasso's last attempt to file the Complaint on October 19, 2021 was  
12 effective, but beyond the sixty-day filing deadline.  
13

14 None of these facts can be disputed by Plaintiff.

15 Ms. Jasso's attempt to file the Complaint with the Bankruptcy Clerk window on  
16 time was ineffective because an unsigned complaint without a wet signature is not  
17 a proper filing a complaint. Under Federal Rule of Bankruptcy Procedure 5005(a),  
18 complaints and other papers required to be filed under the Federal Rules of  
19 Bankruptcy Procedure "shall be filed with the clerk in the district where the case  
20 under the [Bankruptcy] Code is pending." Because Defendant's bankruptcy case  
21 was pending in the Central District of California, Plaintiff was required to file the  
22 Complaint with the Clerk of the Bankruptcy Court in the Central District of  
23 California. The Local Bankruptcy Rules for the Central District of California  
24 mandate the electronic filing with the Clerk of "all documents submitted in any  
25 case or proceeding," on the Bankruptcy Court's Case Management/Electronic Case  
26 Filing ("CM/ECF") System unless the filing includes confidential court records or  
27  
28

1 the filing party is a pro se litigant [or] an “attorney who files documents in fewer  
2 than 5 bankruptcy cases or adversary proceedings in a single calendar year[.]”

3       Local Bankruptcy Rule 5005-4 and Section 3.1 of the Court Manual for the  
4 United States Bankruptcy Court, Central District of California (the “Court  
5 Manual”). As stated in the Court Manual, “Case Management/Electronic Case  
6 Filing (CM/ECF) is a case management system that allows [attorneys] to  
7 electronically file petitions and other documents via the internet.” Court Manual, §  
8 3.1(a). Generally, [only] attorneys admitted to practice in the Central District of  
9 California, currently in good standing, are eligible to use the CM/ECF system and  
10 file documents with the Bankruptcy Court electronically, and the attorneys must be  
11 registered with CM/ECF, must have completed online training on the CM/ECF  
12 system and prove competence on the system to use it and file documents with the  
13 court electronically. Court Manual, § 3.2(a), (b) and (c).  
14  
15

16  
17       In this case, Plaintiff, a California Licensed Attorney in good standing,  
18 eligible to file documents with the Bankruptcy Court electronically on the court's  
19 CM/ECF system, although not required to file her Complaint electronically, as Ms.  
20 Jasso filed the Adversary Complaint “in pro se”. However, since the inception of  
21 Debtor’s Chapter 7 case, the only address ever provided [by] Ms. Janine Jasso is a  
22 P.O. Box in El Paso, Texas. All complaints and pleadings in this Chapter 7 filed  
23 by Plaintiff, Janine Jasso, Esq. list a P.O. Box 370161 El Paso, TX 79937.  
24

25       Pursuant to Local Bankruptcy Rule 1071-1(c), “Documents filed non-  
26 electronically, other than a petition, must be filed only in the divisional office of  
27 the clerk to which the relevant case or proceeding has been assigned.  
28

1 However, the clerk may, by special waiver or upon the order of the court,  
2 accept documents in any office of the clerk irrespective of division.” Further, a  
3 “document delivered for filing to the clerk will be accepted if accompanied by any  
4 required fee and signature[...].” Local Bankruptcy Rule 5005-1.  
5

6  
7 Section 3.11 of the Court Manual is nearly identical to Local Bankruptcy  
8 Rule 5005-4 and repeats the exceptions to mandatory electronic filing. Court  
9 Manual, § 3.11 at 3-18 and 3-19. Moreover, the Court Manual states that if, for  
10 example, the court is unable to accept electronic filings for any reason, “the option  
11 of filing documents manually at the filing window always remains available and  
12 should be utilized whenever it is essential that a particular document be filed by a  
13 particular date.” Id., § 3.12 at 3-19. For pro se litigants, after application and  
14 approval, the court provides an Electronic Drop Box (“EBD”).  
15

16 The court's local rules and the Court Manual thus provide that the filing of a  
17 complaint or other document with the Clerk of the Bankruptcy Court is to be done  
18 electronically if the filer is required to file electronically, and if the filer [is not]  
19 required to file electronically, the filer is to file the complaint or other document  
20 manually at the filing window of the Clerk's Office.

21 Accordingly, Ms. Jasso’s Unsigned Complaint ECF 1, presented without a  
22 wet signature, was unauthorized and ineffective, and her second filing of the  
23 Complaint at the filing window, (ECF. 3) on October 19, 2021 which was  
24 purportedly executed with Ms. Janine Jasso’s wet signature and effective, was late.  
25

26  
27 The time limit of Federal Rule of Bankruptcy Procedure 4007(c) is strictly  
28 enforced and cannot be extended once the deadline has passed, which happened

1 here as the Complaint was filed late, without any request for extension of time filed  
2 before the deadline.

3  
4 CONCLUSION

5  
6 Plaintiff's Complaint was not filed within the time period required  
7 under Federal Rule of Bankruptcy Procedure 4007(c) and is therefore time-barred.


8 Defendant's respectfully request the Motion To Dismiss the Complaint and  
9 the Adversary Proceeding be granted and the Complaint and the adversary  
10 proceeding be dismissed with prejudice. Anwar v. Johnson, 720 F.3d at 1189  
11 (affirming the bankruptcy court's dismissal of the dischargeability complaint with  
12 prejudice for filing the complaint late under Federal Rule of Bankruptcy Procedure  
13 4007(c)).

14  
15 Debtor in addition, requests the Court to consider any other Orders fair and  
16 just.

17 I declare under penalty of perjury, the foregoing to be true and correct. Signed  
18 this 5th day of January, 2023, at Huntington Beach, California.

19 Dated: 1/5/2023

20 Respectfully submitted,

21  
22   
23 JAMIE LYNN GALLIAN  
24 Defendant, IN PRO PER

25 FOOTNOTES

26 [1] The form also notes that "You must file a complaint: ... if you want to have a  
27 debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6)." Id.  
28

# EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. November 8, 2022 ECF 63
2. November 9, 2022 ECF 68
3. December 5, 2022 ECF 83

From: OC Services bobwentflying@yahoo.com  
Subject: ELECTRONIC SERVICE MOTION TO DISMISS ADVERSARY COMPLAINT.  
Date: November 8, 2022 at 9:21 AM  
To: Janine Jasso j9\_jasso@yahoo.com  
Cc: OC Services bobwentflying@yahoo.com, Jamie Gallian jlgallian@icloud.com

---

OS



FINAL 11.7.22  
GALLIA...pdf.pdf

From: **OC Services** bobwentflying@yahoo.com  
Subject: ELECTRONIC SERVICE MOTION TO DISMISS 12/13/2022  
Date: November 9, 2022 at 12:41 PM  
To: Janine Jasso j9\_jasso@yahoo.com  
Cc: OC Services bobwentflying@yahoo.com, Jamie Gallian jlgallian@icloud.com

---

OS



POS 22-01096  
ADV N...ISS.pdf

From: **OC Services** bobwentflying@yahoo.com  
Subject: Electronic Service Notice of Continued Hearing DOC 63  
Date: December 5, 2022 at 12:45 AM  
To: Janine Jasso j9\_jasso@yahoo.com  
Cc: OC Courts Email Admin apps@occourts.org

---

OS



NOT OF  
CONTI...pdf.pdf

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
5801 SKYLAB ROAD HUNTINGTON BEACH, CA 92649

A true and correct copy of the foregoing document entitled (*specify*): DEFENDANTS' REPLY AND OPPOSITION TO PL  
UNTIMELY RESPONSE (ECF 91) TO MOTION TO DISMISS (ECF 63)

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/05/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 01/06/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

JANINE JASSO, ESQ.

EMAIL ADDRESS: J9\_JASSO@YAHOO.COM

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/06/2023 ROBERT MCLELLAND  
Date Printed Name

*Robert McLelland*  
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

Aaron E DE Leest on behalf of Trustee Jeffrey I Golden (TR)  
adeleest@DanningGill.com, danninggill@gmail.com;adeleest@ecf.inforuptcy.com

Robert P Goe on behalf of Creditor The Huntington Beach Gables Homeowners Association  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Robert P Goe on behalf of Plaintiff The Huntington Beach Gables Homeowners Association  
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Jeffrey I Golden (TR) lwerner@wgllp.com, jig@trustesolutions.net;kadele@wgllp.com

D Edward Hays on behalf of Creditor Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

D Edward Hays on behalf of Interested Party Courtesy NEF  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

D Edward Hays on behalf of Plaintiff Houser Bros. Co.  
ehays@marshackhays.com,  
ehays@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com;cmendoza@marshackhays.com;cmendoza@ecf.courtdrive.com

Brandon J Iskander on behalf of Creditor The Huntington Beach Gables Homeowners Association  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Brandon J Iskander on behalf of Plaintiff The Huntington Beach Gables Homeowners Association  
biskander@goeforlaw.com, kmurphy@goeforlaw.com

Eric P Israel on behalf of Trustee Jeffrey I Golden (TR)  
eisrael@DanningGill.com, danninggill@gmail.com;eisrael@ecf.inforuptcy.com

Laila Masud on behalf of Creditor Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Interested Party Courtesy NEF  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Laila Masud on behalf of Plaintiff Houser Bros. Co.  
lmasud@marshackhays.com, lmasud@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com

Mark A Mellor on behalf of Defendant Randall L Nickel  
mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com

---

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Mark A Mellor on behalf of Interested Party Courtesy NEF  
mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com

Valerie Smith on behalf of Interested Party Courtesy NEF claims@recoverycorp.com

United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  JAMIE LYNN GALLIAN 16222 MONTEREY LANE UNIT 376 HUNTINGTON BEACH, CA 92649 (714)-321-3449 JAMIEGALLIAN@GMAIL.COM       <input type="checkbox"/> Attorney for: <input checked="" type="checkbox"/> Individual appearing without attorney	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b>	
In re: JAMIE LYNN GALLIAN,          <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 8:21-bk-11710-SC  ADVERSARY NO.: 8:21-ap-01096-SC( <i>if applicable</i> )  CHAPTER: 7
JANINE JASSO, ESQ.          <div style="text-align: right;">Plaintiff(s) (if applicable).</div> <div style="text-align: center;">vs.</div> JAMIE LYNN GALLIAN          <div style="text-align: right;">Defendant(s) (if applicable).</div>	<div style="text-align: center;"> <b>NOTICE OF APPEAL AND STATEMENT OF ELECTION</b> </div>

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): JAMIE LYNN GALLIAN
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- ☐ Plaintiff  
☒ Defendant  
☐ Other (*describe*):

For appeals in a bankruptcy case and not in an adversary proceeding.

- ☐ Debtor  
☐ Creditor  
☐ Trustee  
☐ Other (*describe*):

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: Dk. No. 84 & 85 - Order Granting Plaintiff's Motion ECF 47 and denying Defendants Motion for Summary Judgement.ECF 62
2. The date the judgment, order, or decree was entered: 12/21/2022

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Janine Jasso, Esq.  
Attorney:  
Email Address:j9\_jasso@yahoo.com  
  
P.O. Box 370161  
El Paso, TX 79937
2. Party: Jamie Lynn Gallian  
Attorney:  
Jamie Lynn Gallian, In Pro Per - jamiegallian@gmail.com  
16222 Monterey Lane, Unit 376  
Huntington Beach, CA 92649  
Telephone (714) 321-3449

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

**Part 5: Sign below**

Jamie Lynn Gallian Date: Signature of 1/4/2022  
attorney for appellant(s) (or appellant(s)  
if not represented by an attorney)

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

**[Note to inmate filers:** If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

**EXHIBIT 1**

Jasso,  
Plaintiff  
Gallian,  
Defendant

Adv. Proc. No. 21-01096-SC

## CERTIFICATE OF NOTICE

District/off: 0973-8  
Date Rcvd: Dec 19, 2022

User: admin  
Form ID: pdf031

Page 1 of 2  
Total Noticed: 2

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 21, 2022:

NONE

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
pla	Email/Text: j9_jasso@yahoo.com	Dec 20 2022 00:46:00	Janine Jasso, PO Box 370161, El Paso, TX 79937
dft	+ Email/PDF: jamiegallian@gmail.com	Dec 20 2022 00:46:00	Jamie Lynn Gallian, 16222 Monterey Ln #376, Huntington Beach, CA 92649-2258

TOTAL: 2

## BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, \*duplicate of an address listed above, \*P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
dft		J-Pad, LLC
dft		J-Sandcastle Co LLC

TOTAL: 2 Undeliverable, 0 Duplicate, 0 Out of date forwarding address

## NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 21, 2022

Signature: /s/Gustava Winters

## CM/ECF NOTICE OF ELECTRONIC FILING

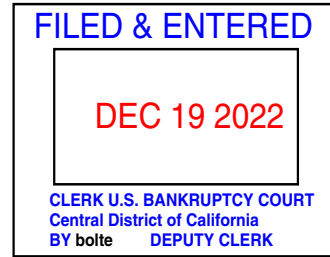
The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 19, 2022 at the address(es) listed below:

Name	Email Address
Jeffrey I Golden (TR)	lwerner@go2.law jig@trustesolutions.net;kadele@go2.law
United States Trustee (SA)	ustpreion16.sa.ecf@usdoj.gov

District/off: 0973-8  
Date Rcvd: Dec 19, 2022  
TOTAL: 2

User: admin  
Form ID: pdf031

Page 2 of 2  
Total Noticed: 2



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

In re:

Jamie Lynn Galian

Debtor(s).

Case No.: 8:21-bk-11710-SC

CHAPTER 7

Adv No: 8:21-ap-01096-SC

**ORDER GRANTING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT [DK. 47] AND  
DENYING DEFENDANT’S COMPETING  
MOTION FOR SUMMARY JUDGMENT [DK.  
62]**

Janine Jasso

Plaintiff(s),

v.

Jamie Lynn Galian

Defendant(s).

Date: December 13, 2022

Time: 1:30 PM

Courtroom: 5C

On December 13, 2022, the Court held a hearing on the following two matters in  
this adversary: 1) Plaintiff’s Motion for Summary Judgment filed September 29, 2022

[Dk. 47] ("Plaintiff's MSJ"); and 2) Defendant's Motion for Summary Judgment filed November 8, 2022 [Dk. 62] ("Defendant's MSJ") (together, the "Motions"). Appearances are as noted on the record. Having considered the Motions, related pleadings, arguments of the parties at the hearing and the docket as a whole, and for the reasons stated on the record and more fully explained below, the Court finds good cause to enter this order GRANTING Plaintiff's MSJ and DENYING Defendant's MSJ.

### **I. Background**

Jamie Gallian, Debtor/ Defendant, filed a voluntary Chapter 7 petition on July 9, 2021. A few months later, on October 18, 2021, Janine Jasso, Plaintiff, initiated an adversary proceeding against Defendant, asserting multiple causes of action, including the non-dischargeability of a debt owed by Debtor to Plaintiff as part of a criminal restitution judgment pursuant to 11 U.S.C. § 523(a)(7).<sup>1</sup>

On September 29, 2022, Plaintiff filed her Motion for Summary Judgment, and supporting documents, seeking summary adjudication on only the § 523(a)(7) cause of action [Dks. 47 - 50]. Plaintiff's MSJ was set for hearing on November 15, 2022. On November 4, 2022, Defendant filed a Motion for Extension of Time [Dk. 58] ("Extension Motion"), seeking a continued hearing date, relief from the deadline to oppose Plaintiff's MSJ, and advising the Court that Defendant intended to file her own dispositive motion.

On November 8, 2022, Defendant filed her competing Motion for Summary Judgment, again seeking summary adjudication on only the § 523(a)(7) cause of action [Dk. 62].<sup>2</sup> Defendant's MSJ was set for hearing on December 13, 2022. Also, on November 8, 2022, the Court entered an order granting the Extension Motion<sup>3</sup>, and continuing the hearing on Plaintiff's MSJ to be heard concurrently with Defendant's MSJ

<sup>1</sup> On November 16, 2021, Plaintiff filed an amended complaint, which also contained multiple causes of action, including an action for non-dischargeability pursuant to 11 U.S.C. § 523(a)(7) [Dk. 6].

<sup>2</sup> The Court notes that Defendant's MSJ is incorrectly titled "Plaintiff Jamie Lynn Gallian Motion for Summary Judgment," despite being filed by Defendant. The docket entry is likewise confusing, as it matches the title of the filed motion, rather than the accurate description of the motion (i.e., that it is, in fact, Defendant's Motion for Summary Judgment).

<sup>3</sup> Plaintiff filed an Opposition to the Extension Motion, which was dated November 9, 2022 [Dk. 69].

1 on December 13, 2022. The following day, Defendant filed a request for judicial notice  
2 and notice of recent decision in support of her MSJ [Dks. 70-71].

3 On November 14, 2022, Defendant filed an opposition to Plaintiff's MSJ,  
4 generally repeating the same arguments contained in her own competing MSJ [Dk. 74].<sup>4</sup>  
5 Plaintiff filed a reply on December 1, 2022 [Dk. 75].

## 6 II. Discussion

7 Both Plaintiff's MSJ and Defendant's MSJ seek a judgment in their own  
8 respective favors pursuant to § 523(a)(7) regarding the debt owed by Defendant as part  
9 of a criminal restitution order. Both Plaintiff and Defendant agree that there are no  
10 genuine issues of material fact, and assert that they are entitled to judgment as a matter  
11 of law.<sup>5</sup> Having reviewed and thoroughly analyzed the law, the Court finds that Plaintiff  
12 is entitled to a favorable judgment as a matter of law.

13 11 U.S. Code § 523(a)(7) states that a debtor may not discharge any debt (1) to  
14 the extent such debt is for a fine, penalty, or forfeiture (2) payable to and for the benefit  
15 of a governmental unit, and (3) is not compensation for actual pecuniary loss.

16 In *Kelly v. Robinson*, 479 U.S. 36 (1986), the United States Supreme Court  
17 determined that § 523(a)(7) applied to state criminal restitution orders in Chapter 7  
18 bankruptcy proceedings. In reaching this conclusion, the Supreme Court broadly held  
19 "that § 523(a)(7) preserves from discharge **any condition a state criminal court**  
20 **imposes as part of a criminal sentence.**" *Id.* at 50 (emphasis added).

21 Defendant admits that *Kelly* is controlling, but argues that it should not be  
22 followed given the Ninth Circuit's decision in *In re Albert-Sheridan*, where the Ninth  
23 Circuit "sought to cabin *Kelly*'s reach and refused to expand its rationale." *In re Albert-*  
24 *Sheridan*, 960 F.3d 1188, 1195 (9th Cir. 2020) (citing *In re Scheer*, 819 F.3d 1206, 1210  
25 (9th Cir. 2016). Defendant argues that application of *Kelly* is similarly unwarranted in her  
26

27 <sup>4</sup> Defendant filed an amended opposition on November 21, 2022 [Dk. 75].

28 <sup>5</sup> Summary judgment may be awarded where there "is no genuine dispute as to any material fact and the  
movant is entitled to judgment as a matter of law." Fed. R. Civ. Proc. 56(a).

1 case and attempts to distinguish the restitution awarded against her from that awarded  
2 in *Kelly*.

3 Defendant's efforts to align her case with *Albert-Sheridan* are unpersuasive.  
4 Here, the criminal restitution judgment entered against Defendant was awarded  
5 pursuant to California Penal Code §1202.4, subd. (f).<sup>6</sup> *Albert-Sheridan* did not involve  
6 criminal proceedings.

7 Moreover, this Court notes that in *O'Hara v. United States Tr. (In re O'Hara)*, 835  
8 Fed Appx 253 (9th Cir. 2020), which was decided by the Ninth Circuit six months after  
9 the *Albert-Sheridan* decision upon which Debtor relies was issued, the Ninth Circuit  
10 again reiterated that criminal restitution judgments fall squarely within §523(a)(7),  
11 stating:

12 The bankruptcy court correctly concluded that Chapman's entire claim was  
13 nondischargeable. The debt arose from a criminal restitution order. That falls  
14 squarely within *Kelly v. Robinson*, 479 U.S. 36, 50, 107 S. Ct. 353, 93 L. Ed. 2d 216  
15 (1986), which held that § 523(a)(7) "preserves from discharge any condition a state  
16 criminal court imposes as part of a criminal sentence." Seeking to sidestep this  
17 holding, Mr. O'Hara notes that the debt stems from a "victim restitution order" under  
California Penal Code § 1202.4(f), not a "restitution fine" under § 1202.4(b). This  
court has already rejected an identical argument. See *In re Armstrong*, 677 F. App'x  
434, 435-36 (9th Cir. 2017).

18 In *O'Hara*, the Ninth Circuit reaffirmed its reliance on *In re Armstrong*, 677 Fed. Appx  
19 434 (9th Cir. 2017), which further explained as follows:

20 Nevertheless, *Armstrong* contends that his criminal restitution is dischargeable  
21 because, unlike the state statute at issue in *Kelly*, the California penal code provides  
22 for both "restitution" and a "restitution fine." Compare Cal. Penal Code § 1202.4(f)  
23 ("[I]n every case in which a victim has suffered economic loss as a result of the  
24 defendant's conduct, the court shall require that the defendant make restitution to  
25 the victim or victims in an amount established by court order, based on the amount  
26 of loss claimed by the victim or victims or any other showing to the court.") with Cal.  
27 Penal Code § 1202.4(b) ("In every case where a person is convicted of a crime, the  
court shall impose a separate and additional restitution fine, unless it finds  
compelling and extraordinary reasons for not doing so and states those reasons on  
the record."). *Armstrong* argues that the holding of *Kelly* extends only to the

28 <sup>6</sup> The criminal restitution judgment was affirmed on appeal. See, Exhibit G attached to the Request for  
Judicial Notice, which is a copy of the Criminal Appellate Opinion Affirming the Criminal Restitution  
Judgment [Dk. 49, Ex. G].

1 "restitution fine," and not to a restitution order issued pursuant to California Penal  
2 Code § 1202.4(f).

3 This argument is squarely precluded by *Kelly*, which categorically held that criminal  
4 restitution orders are nondischargeable. 479 U.S. at 49-50. The Court's holding did  
5 not hinge upon the specific language or structure of the state law at issue. Rather, it  
6 was based upon the desire not to interfere with state courts' "unfettered  
7 administration of their criminal justice systems." *Id.* at 44. Here, Armstrong's  
8 restitution order served California's penological interests and was imposed as a  
9 function of the administration of that state's criminal justice system. It therefore falls  
10 within the scope of *Kelly*, even though the California penal statute also provides for  
11 the imposition of a separate "restitution fine." To hold otherwise "would hamper the  
12 flexibility of state criminal judges in choosing the combination of imprisonment, fines,  
13 and restitution most likely to further the rehabilitative and deterrent goals of state  
14 criminal justice systems." *Id.* at 49.

15 *In re Armstrong*, 677 Fed. Appx 434 (9th Cir. 2017).

16 Defendant has pointed the Court to the recent case of *Jellinek v. Forlander (In re*  
17 *Jellinek)*, 2022 Bankr. LEXIS 3172, at \*1 (Bankr. S.D. Cal. 2022) and its holding that a  
18 victim restitution debt is dischargeable; however, the Court remains unpersuaded, as:  
19 (1) this Court is not bound by the *Jellinek* holding; and (2) the *Jellinek* decision relies  
20 heavily on the *Albert-Sheridan and Kassas*<sup>7</sup> cases which do not pertain to a victim  
21 restitution debt imposed by a criminal statute. Moreover, *Jellinek* makes no reference to  
22 *Armstrong*, cited above, which appears to be wholly on point. Further, there is no  
23 indication that the recent *Kassas* case, which itself was based upon consideration of the  
24 totality of the CSF program, was meant to overrule *Armstrong*.

25 Defendant also argues that the amount of the victim restitution order was ordered  
26 in a civil proceeding<sup>8</sup>, and so discharge is appropriate. In support of this proposition,  
27 Defendant cites to the non-Ninth Circuit case of *In re Wilson*, 299 B.R. 380, 381 (E.D.  
28 Va. 2003). The *Wilson* Court held that where the criminal court order directed debtor to  
pay restitution based on the amount of plaintiff's loss from Debtor's actions, which

<sup>7</sup> *Kassas v. State Bar of Cal.*, 49 F.4th 1158 (9th Cir. 2022).

<sup>8</sup> This Court offers no opinion on the characterization of the proceeding in which the restitution order was awarded as, under the facts and law, as presented here, it is not material.

1 amount of restitution was ordered by a civil court and not the criminal court itself, it was  
2 plainly not payable to or for the benefit of a government, falling outside of the exception.  
3 *Id.* at 384.

4 However, even the *Wilson* Court acknowledged that there was a split of authority  
5 on the issue with the “majority of decisions hav[ing] held that criminal restitution orders  
6 payable to victims of a debtor's criminal conduct are excepted from discharge under  
7 authority of the Supreme Court's ruling in *Kelly v. Robinson*.” *Id.* at 382.

8 The Ninth Circuit appears to take the majority view, which is opposite of *Wilson*.  
9 In *Armstrong*, the Ninth Circuit noted that “the fact that the California statute provides  
10 that restitution is to be based on the amount of loss claimed by the victim or victims is  
11 irrelevant, for such is the nature of restitution.” *Armstrong*, 677 F. App'x at 436 (internal  
12 quotations and citations omitted). Moreover, “the fact that restitution may be determined  
13 by reference to the amount of harm caused by the offender does not alter its penal  
14 character.” *Id.* (internal quotations and citations omitted). Accordingly, Defendant's  
15 reliance on the *Wilson* decision, a non-binding, non-Ninth Circuit decision that contains  
16 holdings which directly contradict those contained in Ninth Circuit authority, is not  
17 persuasive.

18 Here, the restitution order was awarded to Plaintiff against Defendant as part of a  
19 criminal proceeding pursuant to California Penal Code § 1202.4.<sup>9</sup> In applying  
20

21  
22 <sup>9</sup> California Penal Code §1202.4 provides as follows, in relevant part:

23 (a) (1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of  
the commission of a crime shall receive restitution directly from a defendant convicted of that crime.

24 (2) Upon a person being convicted of a crime in the State of California, the court shall order the  
defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

25 (3) The court, in addition to any other penalty provided or imposed under the law, shall order the  
26 defendant to pay both of the following:

27 (A) A restitution fine in accordance with subdivision (b).

28 (B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be  
enforceable as if the order were a civil judgment.

1 *Armstrong*, it matters not under what subsection the restitution order was awarded.

2 While *Armstrong* is not a published case, the Court finds great value in its factual  
3 similarity, and believes it accurately reflects the Ninth Circuit's position as to the issues  
4 herein. Thus, the restitution order is nondischargeable under § 523(a)(7).

5  
6 (b) In every case where a person is convicted of a crime, the court shall impose a separate and additional  
7 restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those  
8 reasons on the record.

9 (1) The restitution fine shall be set at the discretion of the court and commensurate with the  
10 seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than three  
11 hundred dollars (\$300) and not more than ten thousand dollars (\$10,000). If the person is convicted of  
12 a misdemeanor, the fine shall not be less than one hundred fifty dollars (\$150) and not more than one  
13 thousand dollars (\$1,000).

14 (2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of  
15 the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the  
16 defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is  
17 convicted.

18 (c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not  
19 doing so and states those reasons on the record. A defendant's inability to pay shall not be considered a  
20 compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered  
21 only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph  
22 (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest,  
23 except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of  
24 the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or  
25 child support or subject to any other legal exemption.

26 (d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to  
27 paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to,  
28 the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its  
commission, any economic gain derived by the defendant as a result of the crime, the extent to which any  
other person suffered losses as a result of the crime, and the number of victims involved in the crime.  
Those losses may include pecuniary losses to the victim or the victim's dependents as well as intangible  
losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay  
may include the defendant's future earning capacity. A defendant shall bear the burden of demonstrating  
the defendant's inability to pay. Express findings by the court as to the factors bearing on the amount of  
the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter  
12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge  
authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (p) and (q), in every case in which a victim has suffered economic  
loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to  
the victim or victims in an amount established by court order, based on the amount of loss claimed by the  
victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time  
of sentencing, the restitution order shall include a provision that the amount shall be determined at the  
direction of the court. The court shall order full restitution. The court may specify that funds confiscated at  
the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with  
Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution order if the  
funds are not exempt for spousal or child support or subject to any other legal exemption.


### III. Conclusion

Finding the arguments contained in Defendant's MSJ and opposition to Plaintiff's MSJ unavailing, and having determined that they are based upon the same material facts and simply argue that a different application of law should be applied to said facts, and for the reasons more fully stated above, the Court finds it appropriate to grant summary judgment in favor of Plaintiff on her §523(a)(7) cause of action. Accordingly, Plaintiff's MSJ is GRANTED and Defendant's MSJ is DENIED.

IT IS SO ORDERED.

###

Date: December 19, 2022

  
Scott C. Clarkson  
United States Bankruptcy Judge

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 5801 SKYLAB ROAD HUNTINGTON BEACH, CA 92649

AMENDED  
DEFENDANTS REQUEST FOR EXTENSION OF TIME TO FILE

A true and correct copy of the foregoing document entitled: **NOTICE OF APPEAL AND STATEMENT OF ELECTION** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 9, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

XX Service information continued on attached page



**2. SERVED BY UNITED STATES MAIL:** On , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE'S COPY

HONORABLE SCOTT C. CLARKSON

UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA

RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE

411 WEST FOURTH STREET, SUITE 5130 / COURTROOM 5C

SANTA ANA, CA 92701-4593

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 9, 2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

JANINE JASSO, ESQ EMAIL ADDRESS: J9\_JASSO@YAHOO.COM



XX Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 9, 2023

Robert McLelland

Date

Printed Name

*Robert McLelland*

Signature

bobwentflying@yahoo.com

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** CONTINUED:

- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO.:** Bradford Barnhardt  
bbarnhardt@marshackhays.com, bbarnhardt@ecf.courtdrive.com, kfrederick@ecf.courtdrive.com
- **ATTORNEY FOR TRUSTEE JEFFREY I GOLDEN (TR):** Aaron E DE Leest adeleest@DanningGill.com,  
danninggill@gmail.com; adeleest@ecf.inforuptcy.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF THE HUNTINGTON BEACH GABLES HOMEOWNERS' ASSOCIATION:** Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com
- **TRUSTEE JEFFREY I GOLDEN (TR):** Jeffrey I Golden (TR) lwerner@wgllp.com, jig@trustesolutions.net;  
kadele@wgllp.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** D Edward Hays ehays@marshackhays.com,  
ehays@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@marshackhays.com;  
cmendoza@ecf.courtdrive.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF THE HUNTINGTON BEACH GABLES HOMEOWNERS' ASSOCIATION:** Brandon J Iskander biskander@goeforlaw.com, kmurphy@goeforlaw.com
- **ATTORNEY FOR TRUSTEE JEFFREY I GOLDEN (TR):** Eric P Israel eisrael@DanningGill.com,  
danninggill@gmail.com; eisrael@ecf.inforuptcy.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** Laila Masud lmasud@marshackhays.com,  
lmasud@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com
- **ATTORNEY FOR DEFENDANT RANDALL L NICKEL:** Mark A Mellor mail@mellorlawfirm.com,  
mellormr79158@notify.bestcase.com
- **INTERESTED PARTY COURTESY NEF:** Valerie Smith claims@recoverycorp.com
- **U.S. TRUSTEE:** United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

SERVICE by Email:

JANINE JASSO, ESQ.  
EMAIL ADDRESS: j9\_jasso@yahoo.com